

No. 15809

United States
Court of Appeals
for the Ninth Circuit

JOE PALERMO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Two Volumes

Volume I
(Pages 1 to 324)

Appeal from the United States District Court for the
Eastern District of Washington,
Southern Division.

JAN 7 1957

PAUL P. HOFFMAN, CLERK

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Attorney at Law,

415 Miller Building,

Yakima, Washington,

Attorney for Defendant-Appellant.

United States District Court for the Eastern
District of Washington, Southern Division

No. C-4569

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOE PALERMO,

Defendant.

INDICTMENT

Vio: Sec. 145(b) Internal Revenue Code. 26 USCA
145(b).

The Grand Jury charges:

Count I.

That on or about the 15th day of February, 1951, at White Salmon, in the Southern Division of the Eastern District of Washington, Joe Palermo, who during the calendar year 1950 was a married man, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1950 by preparing or causing to be prepared, signing, and mailing or causing to be mailed, in the Eastern District of Washington to the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, Washington, a false and fraudulent joint income tax return on behalf of himself and his wife, and which return the defendant caused to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, Wash-

ington, wherein it was stated that their net income for said calendar year was the sum of \$4,553.00 and that the amount of tax due and owing thereon was the sum of \$403.00, whereas, as he then and there well knew, their joint net income for said calendar year was the sum of \$20,426.70, upon which said net income there was owing to the United States of America an income tax of \$4,347.90, all in violation of Sec. 145(b), Internal Revenue Code; 26 USCA Sec. 145(b) [1*]

Count II.

That on or about the 9th day of February, 1952, at White Salmon, in the Southern Division of the Eastern District of Washington, Joe Palermo, who during the calendar year 1951 was a married man, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1951 by preparing or causing to be prepared, signing, and mailing or causing to be mailed, in the Eastern District of Washington to the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, Washington, a false and fraudulent joint income tax return on behalf of himself and his wife, and which return the defendant caused to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, Washington, wherein it was stated that their net income for said calendar year was the sum

*Page numbering appearing at foot of page of original Certified Transcript of Record.

of \$12,378.81 and that the amount of tax due and owing thereon was the sum of \$2,408.28, whereas, as he then and there well knew, their joint net income for said calendar year was the sum of \$34,330.29, upon which said net income there was owing to the United States of America an income tax of \$10,-862.46, all in violation of Sec. 145(b), Internal Revenue Code; 26 USCA Sec. 145(b).

Count III.

That on or about the 30th day of January, 1953, at White Salmon, in the Southern Division of the Eastern District of Washington, Joe Palermo, who during the calendar year 1952 was a married man, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1952 by preparing or causing to be prepared, signing, and mailing or causing to be mailed, in the Eastern District of Washington to the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, Washington, a false and fraudulent joint income tax return on behalf of himself and [2] his wife, and which return the defendant caused to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, Washington, wherein it was stated that their net income for said calendar year was the sum of \$11,791.22 and that the amount of tax due and owing thereon was the sum of \$2,450.90, whereas, as he then and there well knew, their joint net income for said

calendar year was the sum of \$41,249.72 upon which said net income there was owing to the United States of America an income tax of \$15,898.58, all in violation of Sec. 145(b), Internal Revenue Code; 26 USCA Sec. 145(b).

Count IV.

That on or about the 25th day of February, 1954, at White Salmon, in the Southern Division of the Eastern District of Washington, Joe Palermo, who during the calendar year 1953 was a married man, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1953 by preparing or causing to be prepared, signing, and mailing or causing to be mailed, in the Eastern District of Washington to the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, Washington, a false and fraudulent joint income tax return on behalf of himself and his wife, and which return the defendant caused to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, Washington, wherein it was stated that their net income for said calendar year was the sum of \$16,725.32 and that the amount of tax due and owing thereon was the sum of \$4,026.60, whereas, as he then and there well knew, their joint net income for said calendar year was the sum of \$29,689.49, upon which said net income there was owing to the United States of America an income tax of \$9,458.96,

all in violation of Sec. 145(b), Internal Revenue Code; 26 USCA Sec. 145(b).

A True Bill.

/s/ CALBURN MARKS,
Foreman.

/s/ WILLIAM B. BANTZ,
United States Attorney.

Date: December 5, 1956.

[Endorsed]: Filed December 7, 1956. [3]

[Title of District Court and Cause.]

DEFENDANT'S REQUESTED
INSTRUCTIONS

Comes now the defendant and requests the Court to give the following instructions to the Jury at the time of the trial of the above cause.

VELIKANJE, VELIKANJE &
MOORE,

/s/ JOHN S. MOORE,
Attorneys for the Defendant.

Defendant's Instruction No. 1

You are instructed to return a verdict of "Not Guilty" as to all four counts of the indictment against the defendant herein. [661]

Defendant's Instruction No. 9

If the evidence in this case can be reconciled either with the theory of innocence or guilt, the law requires that the defendant be given the benefit of the doubt and that the theory of innocence be adopted by the jury. You will review all of the facts and circumstances in the light of this instruction. [662]

Defendant's Instruction No. 11

Unless there is substantial evidence of facts which excludes every other reasonable hypothesis but that of guilt, and if all the substantial evidence is as consistent with innocence as with guilt, then it is your duty to return a verdict of not guilty. [663]

Defendant's Instruction No. 12

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts which have a legitimate tendency to lead the mind to the conclusion that the fact exists which is sought to be established. It must be such as to exclude every reasonable doubt of the guilt of the defendant, and if it does not do so, or if you believe the circumstances to be as consistent with innocence as with guilt, it is your duty to acquit the defendant.

In order to convict on circumstantial evidence, the circumstances relied on must point so unerringly to the guilt of the defendant as to exclude every other reasonable hypothesis. The circumstances thus relied on must be proved by the United States to your satisfaction beyond a reasonable doubt, must be consistent with each other, and inconsistent with every other reasonable theory of innocence. [664]

Defendant's Instruction No. 16

The filing of an incorrect or inaccurate income tax return is unlawful as to the defendant, only if the defendant did so wilfully, with knowledge of its falseness, and with intent to evade taxes. There is no presumption of guilt which may be drawn from the act itself—both knowledge and wilfulness must be established by the independent proof, direct or circumstantial. [665]

Defendant's Instruction No. 20

In order to secure conviction, it is necessary that the United States prove that the conduct of the defendant was wilful. The mere fact that an incorrect tax return was filed by him is not sufficient to in itself convict the defendant. If you believe the defendant did not act wilfully, but did act mistakenly, carelessly, negligently, or even recklessly, and that he did act in good faith without any wilful intent on his part to evade or defeat any income tax payment, or as the result of inadvertence, misunderstanding, or even careless bookkeeping, it is your duty to acquit the defendant. [666]

Defendant's Instruction No. 21

You are instructed that in cases of this character, there is only one state of mind that can supply the intent necessary to sustain a conviction, and that is the specific intent to defeat or evade payment of the tax due; nor would the filing of a false return with any bad purpose supply the necessary intent. The bad purpose must be to evade or defeat the income

tax that is due. The filing of any incorrect return, without a justifiable excuse, or without ground for believing it to be lawful, or with a careless disregard for whether or not one has the right to do so, do not in themselves constitute wilful intent. [667]

Defendant's Instruction No. 24

“Wilfully” means knowingly and with a bad heart and bad intent. It means having the purpose to cheat or defraud, or do a wrong in connection with a tax matter. It is not enough if all that is shown is that the defendant was stubborn or stupid, careless, or reckless, or negligent. A defendant is not wilfully evading a tax if he is careless about keeping his books and records. He is not wilfully evading a tax if all that is shown is that he made errors. He is not wilfully evading a tax if he acts without the advice of an accountant or lawyer, for there is no requirement that a taxpayer, no matter how large his income, should engage a lawyer or an accountant in the keeping of his books or the preparation of his tax return. [668]

Defendant's Instruction No. 29

The basic issue in this case between the Government and the defendant is the question of whether the admitted underreporting of income by the defendant was the result of a wilful attempt by the defendant to evade income tax for the years under consideration. The Government has the burden of proving to you beyond a reasonable doubt that the defendant did wilfully attempt tax evasion, which

the defendant denies. "Wilful attempt" consists of two elements, the attempt itself, and knowing criminal intent. In determining the question of "wilful" before you may find against the defendant on any count of the indictment you must find beyond a reasonable doubt that at the time of the preparation and filing of defendant's income tax return for the tax year of such count, defendant had the specific intent to file an income tax return understating his income with the evil motive or bad purpose of thereby evading or defeating the payment of his proper income tax, that is, a criminal intent.

The intent, if any, with which an individual performs an act cannot be proved by others, normally, except by circumstantial evidence. Certain acts or conduct may be used by you in making a determination of whether or not the defendant had such specific criminal intent, while other acts or conduct may not. Acts or conduct from which an affirmative wilful attempt to evade may be inferred are such as deliberate concealing of assets, keeping two sets of books, making of false entries, invoices, or alterations in books, covering up sources of income, deliberate destruction of records, and other conduct the likely effect of which would be to mislead or conceal. However, the fact of understatement of income, the amount of the deficiency of tax or income, or disparity between income received and income reported cannot be considered as a factor proving or tending to prove the specific criminal intent. No presumption of criminal intent arises merely because of the underreporting of income itself. In addition, acts, or

conduct which are the result of carelessness, negligence, ignorance, or inadvertence [669] may not be used to infer the specific criminal intent because such acts or conduct would negative the existence of the necessary condition of intent itself.

Further, in your consideration of such facts, if any be present in this case, it is essential, before you may infer specific criminal intent from any acts or conduct of the defendant, that such acts or conduct be consistent with the theory of the defendant's guilt, inconsistent with every reasonable theory of the defendant's innocence, and exclude every reasonable doubt of the defendant's guilt.

Therefore, your process of consideration of the element of specific criminal intent on each count should be as follows: First, determine whether or not you can find beyond a reasonable doubt the existence of acts or conduct on the part of the defendant, from which, as circumstantial evidence, you feel you might infer the existence of a specific criminal intent in the defendant to evade or defeat his income tax. If you find no such acts or conduct at this point, you must acquit the defendant without further consideration. Second, if you do so find, then determine whether those acts and conduct are consistent with the theory of defendant's guilt, inconsistent with every reasonable theory of the defendant's innocence, and exclude every reasonable doubt of the defendant's guilt. If you conclude that these three conditions exist as to such facts, then you should find one of the essential factors necessary to determine the defendant's guilt—the existence of the

specific criminal intent. However, if having found such acts or conduct to exist, you do not find that they are consistent with the theory of the defendant's guilt, or if you do not find that they are inconsistent with every reasonable theory of defendant's innocence, or if you do not find that they exclude every reasonable doubt of the defendant's guilt, then or in either of those events, you must acquit the defendant.

[Endorsed]: Filed July 26, 1957. [670]

[Title of District Court and Cause.]

VERDICT

We, the Jury in the Above-Entitled Cause, find the defendant, Joe Palermo,

Is Guilty as charged in Count 1 of the Indictment;

Is Guilty as charged in Count 2 of the Indictment;

Is Guilty as charged in Count 3 of the Indictment and

Is Guilty as charged in Count 4 of the Indictment.

/s/ G. E. BOYLE,
Foreman.

[Endorsed]: Filed July 30, 1957. [671]

United States District Court for the Eastern
District of Washington, Southern Division

No. C-4569

UNITED STATES OF AMERICA,

vs.

JOE PALERMO.

JUDGMENT AND COMMITMENT

On this 30th day of July, 1957, came the attorney for the government and the defendant appeared in person and with counsel, John S. Moore, Jr. and F. Frederick Velikanje.

It Is Adjudged that the defendant has been convicted upon his plea of Not Guilty and a Verdict of Guilty of the offense of Vio. Sec. 145(b), Title 26, USC Evasion of Income Tax as charged in the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Six months and fine of \$2,500.00 on Count 1;

Six months and fine of \$2,500.00 on Count 2;

Six months and fine of \$2,500.00 on Count 3,

and

Six months and fine of \$2,500.00 on Count 4, imprisonment sentences to run concurrently. Execution of sentence suspended for ten days.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ SAM M. DRIVER,

United States District Judge.

[Endorsed]: Filed July 30, 1957. [672]

[Title of District Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL
OR IN THE ALTERNATIVE FOR A NEW
TRIAL

The defendant moves the Court for judgment of acquittal or in the alternative to grant him a new trial for the following reasons:

1. That the Court erred in denying the defendant's motion for acquittal made at the conclusion of the evidence.
2. That the verdict is contrary to the weight of the evidence.
3. That the verdict is not supported by substantial evidence.
4. That the Court erred in charging the jury and in refusing to charge the jury as requested.

5. That the Court erred in admitting exhibits offered by the plaintiff to which objections were made.

/s/ JOHN S. MOORE, JR.,

/s/ E. FREDERICK VELIKANJE,
Attorneys for the Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed July 31, 1957. [673]

United States District Court Eastern District of
Washington, Southern Division

No. C-4569

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOE PALERMO,

Defendant.

RECORD OF PROCEEDINGS ON MOTION
FOR JUDGMENT OF ACQUITTAL OR, IN
THE ALTERNATIVE, MOTION FOR NEW
TRIAL

Be It Remembered that the above-entitled cause came on for hearing at Pasco, Washington, on the 5th day of September, 1957, before the Honorable Sam M. Driver, Judge of the said Court; William B. Bantz, United States Attorney, Eastern District of Washington, appearing on behalf of the plaintiff; John S. Moore appearing on behalf of the defend-

ant; and the following proceedings were had, to wit: [674]

The Court: United States against Joe Palermo, motion for judgment of acquittal and, in the alternative, motion for new trial.

Mr. Moore.

Mr. Moore: Your Honor, I don't have very much that is new that we didn't argue before so I won't dwell on it in view of the memorandum which I have submitted.

The Court: I have read your memorandum.

Mr. Moore: I merely wanted to point out two things:

Going back to the Elwert case, which I cited to the Court at the close of the trial and the Court at that time advised that in the Court's opinion the Supreme Court had thrown that rule out——

The Court: Do you have the citation there?

Mr. Moore: Of the Elwert case?

The Court: That is on the circumstantial evidence, you mean?

Mr. Moore: No, the Elwert case is the one which said that unless the Court ruled that reasonable minds could not find——

The Court: Oh.

Mr. Moore: ——some other hypothesis other than guilt, that the Court had to direct a verdict of acquittal, and along that line the Court advised that the Court's opinions in the Holland case and Consumer cases had ruled [675] otherwise and set aside that rule.

I merely wanted to point out that it appears to us

that the Holland case merely sets up the rule that where the Court was discussing the circumstantial evidence instruction in that case, the Court said:

“The petitioners assail the refusal of the trial judge to instruct that where the government’s evidence is circumstantial, it must be such as to exclude every reasonable hypothesis other than that of guilt. There is some support for this type of instruction in the lower court decisions.”

The Court: I gave you a citation of the Supreme Court case in which the Supreme Court of the United States has said, just as clearly as the English language can say it, that it isn’t necessary to instruct that in a criminal case the evidence must be such as to negative every reasonable hypothesis except that of guilt; that it isn’t even the best practice to give it. They say that what you should do is to say there is no difference between circumstantial and direct evidence; that the jury should consider them both alike; and that the only requirement is that from all the evidence the jury be convinced of guilt beyond a reasonable doubt. I gave you that citation up there, I [676] haven’t got it here.

Mr. Moore: Well, your Honor——

The Court: You know the case that I am talking about?

Mr. Bantz: Yes.

The Court: Recent case of the Supreme Court of the United States in which it seems to me they say it isn’t necessary to give that instruction.

Mr. Bantz: I looked it up at the time and that is

my understanding, but I don't have it here, what you are talking about.

Mr. Moore: Your Honor, that is exactly what I am saying; I say the same thing, that if you give a proper instruction on reasonable doubt, you do not have to give a circumstantial evidence rule.

The Court: Well, I gave the instruction that there are two kinds of evidence, direct and circumstantial, told them what direct was and what circumstantial was. I said there is no distinction between the two, that they must be convinced from all the evidence beyond a reasonable doubt of the guilt of the accused. I gave that instruction in this case.

Mr. Moore: Yes, I realize that. I say that the Court is correct and that is what the Supreme Court has said, but I merely wanted to point out to the Court that the [677] Elwert case is not talking about that particular point. The Elwert case was putting it at the stand of where the judge is viewing the evidence at the close of the case and what the judge should do or should not do. In other words, our stand is that at the close of the entire case, there being circumstantial evidence only as to intent, that evidence did not exclude every reasonable hypothesis other than that of guilt.

The Court: I do not understand it that way. I don't think the Supreme Court intended to lay down one rule for the jury and another rule for the judge in passing upon these matters. That is my firm conviction after carefully reading that case and rereading it, and if I am wrong, it is easy to get a reversal.

Mr. Moore: That was the only thing I wanted to bring to the Court's attention at this time. I won't argue the rest of those matters that I have presented to the Court in the memorandum, although I will not withdraw them.

The Court: I might say that the Ninth Circuit Conference, which, of course, has no official authority so far as the Court is concerned, but it is an assemblage of the Judges of the Circuit and the District Judges of the Ninth Circuit, and this very thing was discussed and in the forms of criminal instructions that Judge Mathis of Southern California has prepared and with the approval of the Ninth [678] Circuit and have been published in the Federal Rules, this very thing is considered and the Conference came to the conclusion that you didn't have to give that instruction that the evidence must negative every reasonable hypothesis except that of guilt; that the proper one to give was the one I gave here, so it isn't just my own idea.

I think, then, that the motion should be denied—both motions, I should say.

Mr. Moore: Yes.

The Court: Court will recess until 2 o'clock, then. [679]

Reporter's Certificate

United States of America,
Eastern District of Washington—ss.

I, Donald B. Oden, do hereby certify: That at all times herein mentioned I was acting as the Official

Court Reporter of the United States District Court for the Eastern District of Washington; that as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the said Court, held at Pasco, Washington, on the 5th day of September, 1957; that the within and foregoing is a full, accurate and complete transcript of the proceedings on motion for judgment of acquittal or, in the alternative, motion for new trial, in the above-entitled cause.

Dated this 29th day of October, 1957.

/s/ DONALD B. ODEN,
Official Court Reporter.

[Endorsed]: Filed October 30, 1957. [680]

[Title of District Court and Cause.]

ORDER

On the 5th day of September, 1957, at Pasco, Washington, the defendant's motion for judgment of acquittal or in the alternative for a new trial was presented to the above-entitled court and the defendant filed a memorandum of points and authorities in support of motion for acquittal or in the alternative for a new trial and gave oral argument in support of said motion and the court having read the memorandum of points and authorities and heard the oral argument of counsel, ordered as follows:

Motion for judgment of acquittal or in the alternative for a new trial is hereby denied.

Dated September 9th, 1957.

/s/ SAM M. DRIVER,

United States District Judge.

Presented by:

/s/ WILLIAM B. BANTZ,

United States Attorney.

[Endorsed]: Filed September 9, 1957. [681]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Appellant's Name and Address: Joe Palermo, White Salmon, Washington.

Appellant's Attorneys' Names and Addresses: John S. Moore, Jr., and E. Frederick Velikanje, 415 Miller Building, Yakima, Washington.

Offense: Violation of 145(b) of Title 26, United States Code, Evasion of Income Tax.

STATEMENT OF JUDGMENT AND SENTENCE

By Judgment entered July 30, 1957, before the Hon. Sam M. Driver, United States District Judge of the above-entitled Court, appellant was adjudged guilty upon a verdict of guilty rendered by a jury, and appellant was sentenced to six months imprison-

ment and fine of \$2,500.00 on Count One, six months imprisonment and a fine of \$2,500.00 on Count Two, six months imprisonment and a fine of \$2,500.00 on Count Three, and six months imprisonment and a fine of \$2,500.00 on Count Four, with the imprisonment sentences to run concurrently and the execution of sentence suspended for ten days. Thereafter, on September 5, 1957, before the above-entitled Court with the Hon. Sam M. Driver, United States District Judge presiding, appellant's motion for Judgment of Acquittal or in the Alternative for a New Trial was denied by order entered on Sept. 9, 1957.

That appellant is now free on bail of \$2,500.00. The above-named [682] appellant does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated Judgment and the Order Denying Appellant's Motion for Judgment of Acquittal or in the Alternative for a New Trial.

Dated this September 5, 1957.

/s/ JOHN S. MOORE,

/s/ E. FREDERICK VELIKANJE,

Attorneys for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed September 9, 1957. [683]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
RECORD ON APPEAL

On Motion of Defendant and for good cause shown, it is hereby

Ordered that in accordance with Rule 39C of the Federal Rules of Criminal Procedure, the time to docket and file the record on appeal in the above-entitled cause with the United States Court of Appeals for the Ninth Circuit shall be and the same is hereby extended to the 1st day of December, 1957.

Done this 10th day of October, 1957.

/s/ SAM M. DRIVER,

United States District Judge.

Presented by :

/s/ JOHN S. MOORE,

Of Attorneys for Defendant.

Approved by :

/s/ WILLIAM B. BANTZ,

United States Attorney.

[Endorsed] : Filed October 10, 1957. [686]

In the District Court of the United States for the
Eastern District of Washington, Southern Division

Number C-4569

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOE PALERMO,

Defendant.

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled and numbered cause commencing at 11:00 o'clock, a.m., on the 26th day of February, 1957, before the Honorable William J. Lindberg, a United States District Judge, at Yakima, Washington.

Appearances:

MR. FRASER,

Assistant United States Attorney,

Appeared for and on Behalf of the
Plaintiff; and

JOHN S. MOORE, JR., of

VELIKANJE, VELIKANJE AND MOORE,

Appeared for and on Behalf of the Defendant. [4*]

Mr. Fraser: This is United States vs. Joe Palermo. Mr. Palermo is charged by a four-count Indictment returned December 5, 1956, for wilful eva-

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

sion of Federal taxes under section 145(b), Internal Revenue Code. He is represented by John S. Moore, Jr., and indicates he desires to waive reading of the Indictment. Mr. Moore has been furnished a copy of the Indictment.

The Court: Your name is Joe Palermo?

The Defendant: Yes.

The Court: Is that your true and correct name?

The Defendant: Yes.

The Court: And Mr. Moore is your counsel. Do you know the nature of the charges contained in the Indictment?

The Defendant: Yes.

The Court: Mr. Moore, you waive the reading of them?

Mr. Moore: Yes.

The Court: Are you ready to enter a plea at this time?

The Defendant: Yes. [5]

The Court: The Court will ask you what your plea is to Count I?

The Defendant: Not Guilty.

The Court: Plea of not guilty may be entered to Count I. Do you enter a similar plea to all four counts?

The Defendant: Not Guilty.

The Court: All right. Bail has been posted in this amount—in the amount of one thousand dollars (\$1,000.00). Do you wish that to remain?

Mr. Fraser: Yes, sir; that is perfectly all right with the Government.

The Court: This matter then will be set for trial and the Defendant will be advised. Judge Driver will be here about the middle of May.

(Whereupon, hearing in the within-entitled and numbered cause was adjourned.) [6]

Reporter's Certificate

I, Earl V. Halvorson, Official Court Reporter for the United States District Court, Eastern and Western Districts of Washington, do hereby certify that the foregoing transcript has been prepared by me or under my direction and I do further certify that said transcript is a full, true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth.

/s/ EARL V. HALVORSON. [7]

United States District Court for the Eastern
District of Washington, Southern Division

No. C-4569

UNITED STATES OF AMERICA,

Plaintiff.

vs.

JOE PALERMO,

Defendant.

Be It Remembered, that the above-entitled cause came regularly on for trial and determination at Yakima, Washington, on Tuesday, July 23, 1957, before the Honorable Sam M. Driver, United States

District Judge, the Chief Judge of the above-entitled Court, sitting with a jury.

The plaintiff was represented by Mr. William B Bantz, United States Attorney for the Eastern District of Washington, and Mr. Robert Frazer, Assistant United States Attorney for the Eastern District of Washington.

The defendant was represented by Mr. John S. Moore, Jr.; And by Mr. E. Frederick Velikanje, of Messrs. Velikanje, Velikanje & Moore, Attorneys at Law, Yakima, Washington.

Whereupon, proceedings were had and testimony taken as follows, to wit:

The Court: The Clerk will call the roll of the jury. Are you ready, Gentlemen, in the case of United States of America vs. Joe Palermo? [26]

Mr. Bantz: The United States is ready, your Honor.

Mr. Moore: The defendant is ready, your Honor.

The Court: All right, proceed to impanel the jury.

(Whereupon, the jury panel was sworn and twelve jurors placed in the box for questioning.)

STATEMENT TO THE JURY

The Court: Now, Ladies and Gentlemen, I will tell you just enough about this case to enable you to answer these questions. The real issues in the case will be explained to you in much more detail from the attorneys and of course you will get it from the evidence as the case goes on. This indictment, which

is the formal charge in this case as I have told you in other cases, is not any evidence against the defendant. It is merely a statement of the charges against him on which he is tried, and as he has controverted the indictment by a plea of not guilty, it isn't to be taken as evidence of his guilt.

There are four counts. The indictment reads as follows, and I am only going to read to you the first count: It says That on or about the 15th day of February, 1951, at White Salmon, in the Southern Division of the Eastern District of Washington, Joe Palermo, who during the calendar year 1950 was a married man, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1950 by preparing or causing to be prepared, signed and [27] mailing or causing to be mailed, in the Eastern District of Washington to the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, Washington, a false and fraudulent joint income tax return by which he substantially understated the amount of his income and the amount of the tax.

Now, Count II is identical to Count I, except that it is laid a year later, the 9th day of February approximately of 1952, and involves the income tax for the calendar year 1951. Count III is the same again, except that it involves income tax for the calendar year 1952, and Count IV is the same except it involves income tax for the calendar year 1953.

There are four counts that serve for four years in

succession. Now, Mr. Palermo resides at White Salmon, does he, Mr. Moore?

Mr. Moore: Yes, your Honor.

The Court: And his attorney is Mr. Moore whom I just asked this question. Would you mind just standing, Mr. Palermo, so we can see who you are. Thank you. And Mr. Bantz is the United States Attorney, and perhaps you better stand up Mr. Bantz and Mr. Moore so everybody will know you.

(Whereupon, the jury was duly impaneled and sworn to try the case, and after being duly admonished not to discuss the case, court was adjourned until 1:30 p.m.) [28]

July 23, 1957, 1:30 P.M.

OPENING STATEMENT OF GOVERNMENT

Mr. Bantz: Your Honor, Ladies and Gentlemen of the Jury, and Counsel for the defendant: This is what we call the opportunity that I have as the Attorney for the United States to make an opening statement and tell you what we, the United States, as plaintiff will prove in the case and what we must prove so that the case has been sufficiently covered to give it to the jury for you to make a decision.

Judge Driver this morning briefly went over what the case was about. I am not going to read the whole Indictment. I will go over part of it for you as you will have the Indictment in the jury room with you, if that is the case, when you deliberate and can read it carefully. However, I am going to explain in simple laymen's language what it says so that you

will understand a little bit more as the trial proceeds.

To begin with, you are going to have to bear with us for a little while. This is not one of these speedy trials where a fellow gets on that can talk. We have a lot of exhibits. We intend to produce numerous particulars. I will go over those in a minute and some other statements, and I am sure that the defense will also. Mr. Moore and I will try to expedite it as much as possible to keep you attentive enough to what is going on. Some of the testimony takes more time [29] than other testimony does and is necessary, and we have legal procedure to follow and of course the Court keeps us within those bounds and we must adhere to it.

Now, I want to read from the Indictment in which Count I is involved. I will cover it carefully. The other counts are the same except other years and figures are involved. Count I reads as follows:

“That on or about the 15th day of February, 1951, at White Salmon, in the Southern Division of the Eastern District of Washington, Joe Palermo, who during the calendar year 1950 was a married man, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1950 by preparing or causing to be prepared, signing, and mailing or causing to be mailed, in the Eastern District of Washington to the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, Washington, a false and fraudulent joint income tax

return on behalf of himself and his wife, and which return the defendant caused to be filed with the Collector of Internal Revenue for the Internal Revenue Collection District of Washington at Tacoma, Washington, wherein it was stated that their net income for said calendar year was the sum of \$4,553.00 and that the amount of tax due and owing thereon was the sum of \$403.00, whereas, as he then and there well knew, [30] their joint net income for said calendar year was the sum of \$20,426.70, upon which said net income there was owing to the United States of America an income tax of \$4,347.90, all in violation of Section 145(b), Internal Revenue Code; 26 USCA Sec. 145(b).

I will want to take a moment and tell you what that means. The legal language in there ends up this way and means that we must prove that he must pay an income tax, that he has made enough money that he must file an income tax return. We are alleging in here that he filed it and that he voluntarily filed it and made it up when he knowingly and wilfully had knowledge of more income than he had reported and paid tax on.

Now, there are four counts, the first 1950, second 1951, third 1952 and fourth 1953; four separate counts, and I am sure at the end of the trial that the Court will instruct you that each count is a separate crime and so I ask that you pay attention to the years. There are four years involved here.

Now, the Government will talk here concerning other years but they are not what you are concerned

here with as to the crime. We will show that is how he operated his business. But I want to call your attention to remember that there are four separate counts with reference to the defendant starting with the year 1950. The rest of the counts read exactly the [31] same with the exception that they go into the different amount of money. I will come to that. I am going to cover it carefully in a moment.

Now, generally, the Government has two ways in which they can prove the false and fraudulent filing of income tax returns. One is what we call "net worth basis" and the other is by "specific items." And the net worth basis, briefly, is where we start a man with "X" dollars and in a few years later he has in his possession and control "XY" dollars, the increase of which he can't show how he made that and didn't pay income tax on it. The other, specific items, is a matter in which we will show that he received money for certain things which he did not put into his return and did not account for, and we will show it by checks and vouchers or by other means or bank accounts.

Now, in this particular case basically all of our Indictment is drawn on specific items. We are going to introduce through the witnesses several hundred checks and some bank statements, and we are going to rely mainly on specific items. However, there will be a summation of the evidence on a net worth basis showing how much the defendant was worth in the year of 1948, let us say, or 1949, and again at the end of 1953.

Now, the Government has—we start out on one of these cases and we have investigators who are called Internal [32] Revenue Agents in their different divisions, one in the Auditing Section and the other in the Intelligence Section. We have Mr. Paul Simonson from the Intelligence Section here and he will testify, and Mr. Donald Blankenship another one of the Agents with the Internal Revenue Department; and both do C.P.A. work for our office when it is turned into us and they do the preliminary work and all of our investigation.

Now, the case that we are about to present is that we are alleging that this case involves an understatement of income. Mr. Palermo, the defendant here, filed his four income tax returns. On there he did like any of us do. He took his expenses deducted. We are not denying any expense at all in these four years, as far as that is concerned. We are alleging and our proof should show, and if it doesn't you are to so find, that he understated his gross receipts from his logging operations. That is the basis of our case. We are not challenging any of the expenses that he made that might be a little bit different, but they do come up under net worth analysis later on but it isn't of particular purport at this time.

I want to go a little bit further. Anything I say at this time I do not mean for you to take as the law or the evidence. I am up here to explain the position of the United States as the plaintiff, and I don't want you to believe everything I say that isn't it. I only want to show what we intend to prove the next few days in the courtroom [33] here and the only

thing you should use in your determination of the case would be from the evidence itself adduced by the witnesses under questioning here in the courtroom.

We are going to show somewhat in 1949 which is not one of the indictment years, but I believe we will be entitled to show that the defendant did not record certain checks in his books and they were amounting to some \$10,000.00, and that he did not report in his report of 1949, which is not charged here but which we will show as a pattern along in the time. Before we get to 1950 I want to say that the evidence will show that he took in certain items and the evidence will show that he took in money and wrote it down on a piece of paper and we will have as a witness this man that made out the income tax and made out those income tax returns, which were signed by Mr. Palermo and his wife and were mailed to the Collector of Internal Revenue at Tacoma, Washington, where they were processed.

Now, in 1950 the Indictment charges that he states that he made \$4,553.00 which he should pay income tax on and he paid in that year \$403.00. That will show on his income tax return. However, our evidence will show that during that year he received a total of about fifty-three checks and he did not record sixteen of them in his books. And we will attempt to show, as alleged in the Indictment that he left off \$15,800 and some odd dollars of gross income of which there should [34] have been an additional amount of \$3,900 plus dollars in tax paid.

Now, in 1951 we alleged in the Indictment that he made as his income tax return shows and that he filed that he made \$12,300 and some dollars and that he paid \$2,400 and some dollars in tax. We will show that as alleged in the Indictment that he left off some \$21,900 of his income and should have paid, if the above figure is correct, an additional \$8,454.00. I believe that we can show that he received that year from logging operations some fifty-four checks of which he did not record in his books and records some twenty-five of those checks, amounting to about forty-five per cent of the number of checks that he received.

In the year 1942 it is alleged in the Indictment that he made in accordance with his income tax return \$11,790.00 and that he paid income tax that year \$2,450.00. I am leaving off these odd cents here because it just takes too much time. Whereas, in the Indictment we also charge that he well knew and wilfully left off of his income tax return an additional \$29,458.00, and should have paid, if that figure is correct, an additional \$13,400 of income tax. In 1952 I believe our evidence will show that he received sixty-seven checks, and thirty-nine of those were unrecorded, which is about fifty-five per cent of the number of checks received.

In 1953 his income tax return shows that he [35] paid income tax on \$16,725.00 and that the tax for that year that he paid was \$4,026.00, and we alleged in the Indictment and we will attempt to prove here that he left off some \$12,960 and should have paid an additional \$5,432 in tax. I believe that the evidence

will show that in the year 1953 he received sixty-one checks of which he did not record in his books some nineteen of those checks.

I believe that the evidence will show that the slips of paper and the other items that he gave to his man Mr. Bates to make up the income tax return did jibe exactly with his books and that the books he kept did not record these checks or jibe with the income tax return. Of course, we are alleging that he left off of his income the matters that I have been discussing here of unrecorded checks. We will attempt to show what has happened to those during this trial.

During those four years our evidence is and we will attempt to show that there were 235 checks paid to Mr. Palermo, of which ninety-nine were not reported by him, and we will of course break them down by the years as I have been discussing with you previously.

Now, the matter of this case is many times baffling to the individuals when they hear of a fraudulent income tax case. It is a matter for the jury to sit and listen to the facts before them and determine if a defendant knowingly and wilfully failed to file a proper income tax return. It is no [36] mystery. It is no matter that has to be handled in any other way than with common sense. I think in this particular case that there will be a little bit less arguing than in many of these cases that we have because the facts are pretty well agreed upon as to figures by both sides. And it is incumbent upon you to listen to the evidence and the instructions of the Court, which is final, the Court instructs you on the law and you

must listen to that and then make up your minds from the evidence that we produce from this courtroom. I know that the Court asked you this morning to make up your mind after you have heard both sides. I would ask you to do that too. I am not asking you to convict any man until you have heard the evidence from the Government and the evidence from the defense that Mr. Moore and his associate will produce at the time of the trial. It is a little bit hard for you to do it but I am anxious as the Government is and I am sure that Mr. Moore is that you do so. It is a tough problem and we will do as well as we can to keep things straight for you.

Now, I want to tell you momentarily here of what we are going to do in the way of calling witnesses. We have about twenty witnesses, maybe one or two either way, of which some are relatively short, and others will take a little bit longer time. I don't know what the defense has but I thought that I should tell you that we the plaintiff in this case [37] expect to use these witnesses and produce the checks and bank statements and other supporting vouchers so that we may present all the evidence to you concerning this case.

I have nothing further at this time, and thank you, your Honor.

The Court: Do you wish to reserve your statement, Mr. Moore?

Mr. Moore: No, I think I will make it now, your Honor.

The Court: That is all right.

OPENING STATEMENT OF DEFENDANT

Mr. Moore: Your Honor, Counsel, and Ladies and Gentlemen: I think I will make a short statement at this time of what I think this case will prove for you. As Mr. Bantz has said, the Government has come before you today and they have the burden of proving beyond a reasonable doubt that Mr. Palermo has violated the Federal laws.

Now, he has indicated to you something in the nature of how much Mr. Palermo is delinquent in his income tax. We have no objection to that. We agree that he is delinquent in his income tax. As a matter of fact, we actually believe that Mr. Palermo owes more than Mr. Bantz has indicated. We have been working on this for quite a while and actually the exact amount that he owes is not too important as far as this case is concerned because the important thing as far as Mr. Bantz's case presenting it to you and our defense is whether or not, whatever that delinquency amounts to, is the result of [38] Mr. Palermo's criminal intent to evade taxes.

The only way that Mr. Bantz can present to you whether he did or did not intend to evade taxes is to not effect what Mr. Bantz believes is the type of man that Mr. Palermo is, and of course at that point we go in an opposite direction from Mr. Bantz.

Our evidence will I think prove to you exactly what kind of man Mr. Palermo is and when you have heard all of the evidence I think you will agree with us that he did not attempt to evade taxes. He is not the kind of man that would try it and he wasn't try-

ing it in any of these years. Mr. Palermo has been in business since 1947. From 1932 to 1947 he was a truck driver, driving a logging truck, working on and off for his father-in-law. In 1947 with his father-in-law's assistance he bought two or three pieces of equipment and went into the logging business.

He is not a contract logger and he doesn't go out and enter into a contract to haul logs for somebody else. He goes out and looks over the land and buys the timber on it if he can and logs it off himself and sells the logs. And ever since he went into this business it hasn't been a large business and he has had five or six or seven employees, and the business was a success because Mr. Palermo was out doing the work himself. He might work six days a week from morning until dark. And very probably he was at fault—not criminal [39] fault—but he was at fault for not maintaining better books and for not paying closer attention to what his income and outgo was. He didn't do that but that is not a crime.

So, as far as this case is concerned and from the defendant's standpoint, we will merely demonstrate to you facts from which I am sure you will find that he had no criminal intent at any time. Thank you.

Mr. Bantz: May I proceed?

The Court: You may proceed.

Mr. Bantz: Leona Jones.

Mr. Moore: Your Honor, before we proceed, I want to advise the Court that Mr. Palermo is a little bit hard of hearing and I have mentioned that so I might interrupt occasionally.

The Court: Yes.

LEONA M. JONES

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Will you state your name, please?

A. Mrs. Leona M. Jones.

Q. And where do you live, Mrs. Jones?

A. I live at Gig Harbor, Washington.

Q. And where are you employed? [40]

A. In the Internal Revenue Office at Tacoma, Washington.

Q. And how long have you been employed there?

A. More than fifteen years.

Q. And what is your position with the Internal Revenue?

A. I am the Acting Chief of the Returns Processing Branch in the Collection Division.

Q. Now, what does that job entail?

A. Well, considerable. It includes the processing, the original processing of all returns and their filing.

Q. Do you mean that a return that is filed in the District of Washington is filed in your office?

A. Yes, sir. And in Alaska.

Q. And also in Alaska? A. Yes, sir.

Q. Now, does the Tacoma district include the Eastern District of Washington?

A. Yes, sir.

Q. Would you just explain to the Court and to the jury what are the steps that are taken by the In-

(Testimony of Leona M. Jones.)

ternal Revenue in the handling of an income tax return that comes to your office after it has been mailed or delivered by a citizen?

A. The first thing that happens, the envelope is opened, and the return or the contents of the envelope stamped with the receiving date on it, and from that stage the return is checked for signature, name and address and a complete [41] address and it is numbered with a serial number under which it is filed and the Form W-2 is one is attached is verified with the income shown on the return, and the return is mathematically verified as far as the computation of tax. In the final processing the tax that is due is assessed and if an overpayment is due a check is issued or a claim is allowed and the return is filed.

Q. Now, when you say that the return is filed, what do you mean by that?

A. It is placed in our returns file.

Q. And that is where you are employed now?

A. I am employed doing all of those things.

Q. You are in charge of that? A. Yes.

Q. Now, did you bring with you as a result of inquiry, made some income tax returns?

A. Yes, I did.

Q. Some other papers? A. Yes, I did.

Q. May I have those returns, please.

A. Yes, sir.

Mr. Bantz: Would you mark all of those separately?

The Clerk: As a group?

(Testimony of Leona M. Jones.)

Mr. Bantz: Yes, as a group.

The Clerk: That will be the plaintiff's 1 through 6, [42] your Honor.

Q. Mrs. Jones, handing you Plaintiff's No. 1 for Identification, that is one of the income tax returns that you brought with you, is that correct?

A. Yes, sir.

Q. And who is that income tax return from, or purported to be from?

A. It is the return of Joe Palermo and Bertha Palermo, White Salmon, Washington.

Q. And that income tax return came from your custody at Tacoma? A. Yes, sir.

Q. And looking at Plaintiff's Exhibit 2 for Identification, would you examine that. Is that one that you brought with you? A. Yes, sir.

Q. And is that from your files?

A. Yes, sir.

Q. And is that one also from Joe and Bertha Palermo of White Salmon, Washington?

A. It is.

Q. And handing you Plaintiff's Exhibit 3 for Identification, is that one from your files?

A. Yes, sir.

Q. And is that for Joe and Bertha Palermo? [43]

A. Yes, it is.

Q. White Salmon, Washington? A. Yes.

Q. Now, is there an identification mark on there that you can tell that it was filed in your office?

A. Yes, there is a receiving stamp on the return.

Q. On each one of the three? A. Yes.

(Testimony of Leona M. Jones.)

Q. Now, handing you Plaintiff's Exhibit No. 4 for Identification, would you please examine that and state if that is one of the returns that you brought with you? A. Yes, sir.

Q. And does that purport to be one from Joe and Bertha Palermo? A. Yes, sir, it is.

Q. And is that from your files at Tacoma?

A. Yes, sir.

Q. And handing you Plaintiff's Exhibit 5 for Identification, would you examine that. Is that one that you brought from your files in Tacoma?

A. Yes, sir.

Q. And does it purport to be the income tax return of Joe and Bertha Palermo? A. It is.

Q. And would you look at Plaintiff's Exhibit 6 for Identification. [44] Is that one that you brought from Tacoma with you and has that been in your custody with the Internal Revenue?

A. Yes, sir.

Q. And does that purport to be from Joe and Bertha Palermo of White Salmon, Washington?

A. Yes, it is.

The Court: Could you have the witness give us the years involved so that it will help to keep it straight.

Q. (By Mr. Bantz): Would you start with Exhibit 1 and give us the years?

A. Exhibit 1, '48; Exhibit 2, '49; Exhibit 3, '50; Exhibit 4, '51; Exhibit 5, '52; Exhibit 6, '53.

The Court: Now, are you giving us the year for

(Testimony of Leona M. Jones.)

which the tax was returnable or the year for which it was filed?

A. No, I am giving the year for which——

The Court: The tax was covered?

A. Yes.

The Court: All right.

Q. (By Mr. Bantz): In other words, when it says 1953 on the return that is the year that the tax was due?

A. That is the year that the tax was incurred.

The Court: For the calendar year 1953?

A. Yes. The tax would not be due until not later than March 15th for the following year. [45]

The Court: Yes, I understand.

Q. (By Mr. Bantz): Now, on Exhibit 6, too, is there an identifying mark of the Internal Revenue for the date and time of the return?

A. Yes, sir. The "91" is stamped for the District of Washington and Alaska and you will notice that each receiving stamp is with the large figure "91" and the date is included on the receiving stamp for each return.

Q. And there is one on each of these exhibits?

A. Yes, sir.

Q. Exhibits 1 through 6? A. Yes, sir.

Mr. Bantz: All right. Now, I will offer Plaintiff's 1 through 6 in evidence.

Mr. Moore: No objection to 3, 4, 5, and 6, your Honor. We object to the Plaintiff's 1 and 2.

The Court: Well, I will reserve ruling on the others until later statements in the trial. 3, 4, 5 and 6 will be admitted.

(Testimony of Leona M. Jones.)

(Whereupon, the said Income Tax returns were admitted in evidence as Plaintiff's Exhibits 3, 4, 5 and 6.)

Q. (By Mr. Bantz): Handing you Plaintiff's Exhibit 3, would you examine that and tell me now when that was filed? [46]

A. March 5th, 1951.

Q. All right, that is for the year 1950 then?

A. Yes, sir.

Q. Now, how much tax was due that year?

A. The return indicates that there is tax due of \$403.00.

Q. And does it show that it was paid?

A. Yes, it does.

Q. How do you show that it is paid?

A. With blue circle around the figure indicates that that was paid, that amount was paid.

Q. And does that mean then that it was handled in the regular course of processing in your office?

A. Yes, it does.

Q. Now, handing you Plaintiff's Exhibit 4, is that return for the year 1951? A. Yes.

Q. And what day was that filed?

A. February 18, 1952.

Q. In Tacoma? A. Yes, sir.

Q. Now, what was the tax due in that year?

A. \$2,489.28.

Q. And does the return show that that was paid?

A. Yes, it does.

Q. And how can you tell that? [47]

(Testimony of Leona M. Jones.)

A. The tax is encircled with a blue circling.

Q. And that is the way that you handle them in your office? A. Yes, sir.

Q. Handing you Plaintiff's Exhibit 5, is that the income tax return for 1952? A. Yes, sir.

Q. And when was that filed?

A. January 31st, 1953.

Q. All right, and what is the tax due that year?

A. The tax was \$2,531.90.

Q. And what was paid that year?

A. The payments were made on estimated tax totaling \$2,919.60.

Q. And that was paid?

A. Yes, that was paid.

Q. Now, handing you Plaintiff's Exhibit 6, is that for the year 1953? A. Yes.

Q. And when was that filed?

A. March 1st, 1954.

Q. And in this year how much income did he show on his return?

A. He shows adjusted gross income of \$17,725.32.

Q. All right. And then how much tax was due?

A. The total tax was \$4,107.60.

Q. And that was paid? [48]

A. Yes, it was paid by estimate and the payment.

Q. Now, each of the income tax returns will show the gross adjusted income he may have made?

A. Adjusted gross income.

Q. Adjusted gross income? A. Yes.

Q. And will show how much money he paid tax for each year? A. Yes.

(Testimony of Leona M. Jones.)

Q. Now, did you bring another paper with you?

A. Yes, I did.

Q. May I have that, please. Just arrange them so I will know what they are. Now, I asked you to bring some additional papers with you; are these the items that I asked you to bring?

A. Yes, they are.

Q. What does that purport to be?

A. It is a Certificate of Assessments and Payments received in our office.

Q. For what individuals?

A. For Joe and Bertha Palermo, White Salmon, Washington.

Q. Did you check those figures and the records yourself? A. Yes, I did.

Q. And did you see that they were prepared?

A. Yes, sir, I did.

Q. Now, were these figures obtained from the records in your [49] office? A. Yes.

Q. All right. And that is in Tacoma?

A. Yes, sir.

Mr. Bantz: Make them two separate exhibits.

The Clerk: Plaintiff's 7 and 8.

Q. Handing you Plaintiff's Exhibits for Identification 7 and 8, what do those show?

A. It shows assessment and payment of tax, 1952 or 1948 through 1954.

Q. By that you mean it shows what tax was due and what was paid? A. Yes, sir.

Q. In accordance with his records?

A. That's right.

(Testimony of Leona M. Jones.)

The Court: What periods are covered by each of them?

A. Exhibit 7 covers 1948, 1949, 1950, 1951, part of 1952; and 1952 is continued on Exhibit 8.

The Court: Oh, 8 carries it on through?

A. Yes, through 1953 and 1954.

The Court: I see.

Q. Also there are some matters that show much has been put in other funds, is that correct?

A. Yes, sir, there was one payment of \$8,000.00 received in our office August 3rd, 1955 and it was placed in our [50] advance payment account.

Mr. Bantz: I will offer at this time Plaintiff's 7 and 8.

Mr. Moore: We would object to the introduction, your Honor, inasmuch as they relate to 1948, 1949 and 1954, at this time as being immaterial.

Mr. Bantz: Your Honor, if we may reserve the right to offer them at a latter date when I connect them up to the other ones, although they are a part——

The Court: You have no objection to 8, I assume?

Mr. Bantz: 8 has 1954, your Honor.

The Court: Oh, I see, it has a subsequent year, in other words?

Mr. Bantz: Yes.

The Court: Well, you can make an identification of them and I will reserve ruling on them until further foundation has been laid.

Mr. Bantz: All right.

(Testimony of Leona M. Jones.)

Q. Now, Mrs. Jones, what does it mean when you have held in abeyance or held in your office for advance payment of some fund from a taxpayer, what does that mean?

A. Well, a taxpayer—it is held in a special fund if the tax has not been assessed as yet. If additional taxes are assessed they will pay in advance. It is placed in a special fund until such time as assessment is made. [51]

Q. And that is put into a fund where it is separate from the general income tax returns that you get?

A. Yes, sir.

Q. Now, I notice, and I asked you to bring over with you, and I am assuming that you checked it over, that Mr. Palermo has some money in the advance payment account, is that correct?

A. Yes, sir.

Q. And how much was that?

A. That was \$8,000.00.

Q. And that money is in a fund for future assessment?

A. Yes, sir.

Q. And for final determination between the taxpayer and the Internal Revenue office?

A. That is right.

The Court: I think you testified that that was paid in 1955, did you?

A. I believe that was the date. It was received for certification on August 3rd, 1955.

Mr. Bantz: You may examine, Mr. Moore.

(Testimony of Leona M. Jones.)

Cross-Examination

By Mr. Moore:

Q. From that \$8,000.00 suspense item, is it a correct assumption then that the Internal Revenue Service has not made a determination of Mr. Palermo's unpaid tax [52] liability up to the present time?

A. I would say that there has been no tax assessed up to the present time.

Q. That tax has not been assessed against him?

A. Yes, sir, that is right.

Mr. Moore: That is all.

Mr. Bantz: Your Honor, before she leaves I would like to ask permission that we may substitute at a later date photostats and the originals are to be returned to Tacoma, Washington.

The Court: That will be understood.

Mr. Bantz: All right, you may be excused.

The Court: That will be all.

GEORGE F. CHRISTENSEN

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Would you state your name, please.

A. George Christensen.

Q. And, Mr. Christensen, where do you reside?

A. Stevenson, Washington.

(Testimony of George F. Christensen.)

Q. And where are you employed?

A. Bank of Stevenson. [53]

Q. And what is your position with the Bank of Stevenson?

A. The Manager.

Q. And how long have you been with the Bank of Stevenson?

A. Since 1948.

Q. All right. Are you familiar with the records and books and accounts of the Bank of Stevenson?

A. Yes, sir.

Q. Would you just tell me where is Stevenson located?

A. We are halfway between The Dalles and Portland, Oregon, and on the Columbia River Gorge, about twenty miles west of White Salmon.

Q. Twenty miles west of White Salmon?

A. Yes.

Q. Now, I believe that I had subpoenaed or had a subpoena issued to you to furnish some records at this trial?

A. Yes.

Q. Did you bring them with you?

A. I have them here.

The Clerk: Plaintiff's 9 and Plaintiff's 10.

Mr. Bantz: Would you stamp those together and make Plaintiff's 11.

The Clerk: Plaintiff's 11.

Mr. Bantz: Clip those together, would you please, Mr. Taylor.

The Clerk: Plaintiff's 12. Plaintiff's 13. [54]

The Court: 9 through 13?

The Clerk: Yes, your Honor.

(Testimony of George F. Christensen.)

Q. (By Mr. Bantz): Handing you Plaintiff's Exhibit for Identification No. 9, Mr. Christensen, would you examine that and tell what that is purported to be?

A. That is a record of a loan under a contract that Mr. Palermo had with the Bank of Stevenson.

Q. And this is from your files in the bank down at Stevenson? A. Yes, sir, that is correct.

Q. What year does that cover?

A. '40—July of '48 to November '49.

Q. Handing you Plaintiff's Exhibit 10 for Identification, would you please examine that?

A. This is savings account of Joe Palermo.

Q. I notice there is two sheets there. What does the top sheet purport to be?

A. That is a deposit slip.

Q. And what is the second sheet?

A. It is the record of the deposits and withdrawals.

Q. What year does that exhibit cover?

A. August 20, 1952, ending January 3, 1956.

Q. Handing you Plaintiff's 11, would you state what that is?

A. That is signature card for checking account of Joe Palermo.

The Court: Signature card? [55]

A. Signature card of checking account opened 6/28/50.

Q. What is the second item?

A. It is the checking account opened on December 23, 1953, the signature card.

(Testimony of George F. Christensen.)

Q. Is that checking account or savings account?

A. It is checking account.

Q. Both of them? A. Yes, both of them.

Q. Handing you Plaintiff's 12 for Identification, would you please state what that is?

A. These are a group of deposit tickets credited to the account of Joe Palermo's checking account.

Q. What is the account on there?

A. Joe Palermo, White Salmon, Washington.

Q. And for what years do they cover?

A. First deposit 6/28/50 and last deposit December 23, 1952.

Q. And handing you Plaintiff's 13 for Identification, would you please examine that?

A. This is the ledger sheets of the checking account for Joe Palermo from June 29, 1950 until it was closed June 19, 1957, closed by a service charge.

Q. And each of the exhibits that I have shown you, Plaintiff's 9 through 13 for Identification, are part of the official records of the Bank of Stevenson, is that correct? A. That is correct. [56]

Q. And did you check and see if you had any other records concerning Joe Palermo?

A. I checked but I could find none.

Q. You checked and you could find nothing further? A. Yes.

Q. Handing you Plaintiff's Exhibit 12 for Identification, is that a savings or checking account?

A. Checking account.

(Testimony of George F. Christensen.)

Mr. Bantz: Your Honor, I hope tomorrow we will have this speeded up but my witnesses weren't here with these but we are going to get together and counsel will see if we can speed it up a little bit better.

The Court: That is all right.

Mr. Moore: No objection to 10, 11, and 12.

Mr. Bantz: I am offering 10, 11, and 12.

The Court: All right, 10, 11, and 12 will be admitted.

(Whereupon, the said savings and checking account deposit slips and ledger sheets and signature cards were admitted in evidence as Plaintiff's Exhibits Nos. 10, 11, and 12.)

The Court: 13 runs up until 1957.

Mr. Bantz: I am going to have that explained, Your Honor. [57]

The Court: All right.

Mr. Bantz: I am not offering No. 9 at this time.

The Court: All right. Let me see those now.

Mr. Moore: No objection to 13.

The Court: I beg your pardon?

Mr. Moore: No objection to 13.

The Court: To 13?

Mr. Moore: Yes, to 13.

The Court: All right, it will be admitted then.

(Whereupon, said group of bank ledger sheets was admitted in evidence as Plaintiff's Exhibit No. 13.)

The Court: That is all but 9?

(Testimony of George F. Christensen.)

Mr. Bantz: Yes.

Q. Mr. Christensen, handing you Plaintiff's Exhibit 10, would you just tell me whether that is a savings account or——

A. That is correct.

Q. And when was that account opened?

A. August 20, 1952.

Q. And how much was it opened for?

A. \$10,000.00.

Q. And when was that account closed?

A. January 3rd, 1956. [58]

Q. And how much was in the account when it was closed?

A. \$10,606.76.

Q. Now, I notice on Plaintiff's Exhibit 10, we are talking about, there is some action on it, some credits, what is that for?

A. Those were interest payments.

Q. There was nothing else in the account but interest payments?

A. That is all.

Q. And the action or movements shown there are just interest payments put on there semi-annually by the bank?

A. Semi-annually, that is correct.

Q. Handing you Plaintiff's Exhibit No. 13, when was this account opened?

A. June 29, 1950.

Q. And, then, when was the account terminated?

A. June 19th of 1957.

Q. All right, now, referring you to the next to the last page and where the date is February 5th, 1953, do you see that?

A. Yes.

Q. At the bottom of the page?

A. Yes.

(Testimony of George F. Christensen.)

Q. There was a balance of \$144.00, is that correct?
A. \$144.65. It is \$144.65. [59]

Q. Yes, all right. The next is \$67.77?

A. That is correct.

Q. Dated February 13, 1953? A. Correct.

Q. Was there any other deposit after that time?

A. None.

Q. And were there any withdrawals, except for the closing withdrawal?

A. There seems to be two or three, yes, two ten dollar items and a five dollar item and \$55.00 item and another five dollar item.

Q. And when was the account closed?

A. June 19th, 1957.

Q. And he has no other accounts there at the present time?

A. No accounts there at the present time, no.

Mr. Bantz: You may examine.

Cross-Examination

By Mr. Moore:

Q. With reference to Identification 9, do you know what that is in reference to?

A. It is a record of either a loan or contract purchased in the name of Joe Palermo. It was indorsed by W. F. Larson, the dealer at Carson, Washington.

Q. The loan was indorsed?

A. It could be a contract or it could be a note with a [60] co-signer or indorser. The record doesn't

(Testimony of George F. Christensen.)

very explicitly say just what it was.

Q. You have no memory of it personally?

A. I had nothing to do with it.

Q. The record merely shows that that was an indebtedness and that was paid off?

A. That is correct.

Q. And who does it show paid it off?

A. No, it doesn't show who paid it off.

Mr. Moore: That is all.

Mr. Bantz: That is all, Mr. Christensen.

(Witness Excused.)

MARION BABB

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Would you state your name, please.

A. Marion Babb.

Q. And, Mr. Babb, where do you reside?

A. White Salmon, Washington.

Q. And what is your position; where do you work at White Salmon?

A. Manager of the National Bank of [61] Commerce.

Q. And how long have you been with the National Bank of Commerce?

A. Since 1946. At White Salmon since 1951.

Q. Since 1951. And what has your position been with the bank since 1951?

(Testimony of Marion Babb.)

A. Assistant Cashier until 1953, and Manager since that time.

Q. And as Manager are you familiar with the bookkeeping and accounting system of your bank?

A. Yes, sir.

Q. And I take it you received a subpoena from me to produce certain records of Joe Palermo, is that right?

A. Yes, I did.

Q. And did you bring those records with you?

A. Yes.

Mr. Bantz: May I just have them.

The Court: That is 14?

The Clerk: Starting with Plaintiff's 14.

Mr. Bantz: Will you mark that Plaintiff's 15.

The Clerk: Yes, I am just giving you a beginning number. I will give you the last one.

Q. Mr. Babb, were these all of the records that you had concerning Mr. Palermo and his wife?

A. They are the records subpoenaed, sir.

Q. They are the records subpoenaed for the years of 1948 through 1953? [62]

A. That is right, sir.

Q. With the exception of one check item or one deposit slip?

A. One deposit slip and two other items. The signature card is part of that.

Mr. Moore: What was that Identification?

Mr. Bantz: The signature card that they overlooked. I will cover that in just a minute. I just mislaid it.

(Testimony of Marion Babb.)

The Clerk: The last number I have marked was 21, Your Honor.

The Court: All right.

Q. (By Mr. Bantz): Mr. Babb, handing you Plaintiff's Exhibit for Identification No. 14, would you please examine that and state what that is?

A. These are deposit tickets credited to the Joe Palermo account for the year 1948.

Q. 1948? A. Yes.

Q. And those were all of the tickets for that period and part of your official records at the bank?

A. Yes, sir.

Q. And as far as you know were all of the deposit slips that you have had for the year 1948?

A. Yes, as far as I know.

Q. Handing you Plaintiff's 15 for Identification, would you [63] please examine that?

A. Those are deposit tickets for the year 1949, credited to the account of Joe Palermo.

Q. And these are from your official records?

A. That's right.

Q. And to the best of your recollection all of your deposit slips that you had at the bank?

A. Yes, that's right.

Q. Now, handing you Plaintiff's Exhibit for Identification, No. 16, would you please examine that exhibit?

A. These are deposit tickets for the year 1950, credited to the account of Joe Palermo.

Q. And those were brought from your official records at the bank? A. Yes, sir.

(Testimony of Marion Babb.)

Q. To the best of your recollection are those all of the records for the year 1950 that you have concerning deposit slips? A. They are.

Q. Handing you Plaintiff's 17, would you please examine that and state what that purports to be?

A. These are deposit tickets for the account of Joe Palermo for the year 1951.

Q. And those are from your records?

A. They are, sir. [64]

Q. And to the best of your recollection all of the deposit slips for the year 1951?

A. They are.

Q. Handing you Plaintiff's No. 18, would you please examine that. If you recognize it, state what it is?

A. These are deposit tickets for the year 1952 for the account of Joe Palermo.

Q. And they are from your official records?

A. They are, sir.

Q. And to the best of your knowledge all of the deposit slips that the bank had for the year 1952? A. They are.

Q. Handing you Plaintiff's No. 19 for Identification, would you state what that is? Would you please examine that and if you know, state what it is?

A. These are deposit tickets for the year 1953 for the account of Joe Palermo.

Q. And those are from your official records?

A. They are, sir.

(Testimony of Marion Babb.)

Q. And they are all of your deposit slips to the best of your knowledge for the year 1953?

A. There was one deposit ticket missing for July 20, 1953.

Q. We can take that up later on and determine that by looking at the statements?

A. Yes, we can. [65]

Q. In other words, Plaintiff's 16, 17, 18, 19 for the years 1950; 1, 2, and 3; all of the deposit slips are there except for the one, is that correct?

A. Yes, except for the one.

Mr. Bantz: Your Honor, I am going to offer Plaintiff's 16, 17, 18, 19 at this time covering the four indictment years.

Mr. Moore: I note, Mr. Babb, that for 1950 his deposit slips are headed up "Security State Bank." That was the name of the bank before it was taken over by the National Bank of Commerce?

A. It was taken over by the National Bank of Commerce in 1950.

Q. (By Mr. Bantz): The records of the Security State Bank are the records of the National Bank of Commerce? A. Yes.

Q. And they assumed the records?

A. Yes.

Mr. Moore: Well, as I understand it, what these deposit slips will show are all the deposits from 1950 to 1953 relating to the deposits of Joe Palermo?

A. Yes, to the best of my knowledge.

Mr. Moore: We have no objection.

(Testimony of Marion Babb.)

The Court: They will be admitted. 16 to 19, inclusive, is that right?

The Clerk: Yes, 16 through 19. [66]

(Whereupon, the said deposit slips were admitted in evidence as Plaintiff's Exhibits 16, 17, 18, and 19.)

Q. (By Mr. Bantz): Now, handing you 20 and 21, do you recognize those? A. Yes, I do.

Q. What is Plaintiff's 20?

A. It is a signature card for the checking account of Joe and Bertha Palermo for December 19, 1949. There is another one for Joe and Bertha Palermo dated October 13, 1942, I believe, for the Security State Bank.

Q. Those were the two cards you had in your bank concerning authority to cash checks and use the account in the bank? A. Yes.

Q. And Plaintiff's 21, would you examine that and if you recognize it state what it is?

A. Signature card for Joe Palermo and Bertha Palermo, dated March 25, 1954, for the National Bank of Commerce.

Q. And is that card still in effect at your bank?

A. Yes, sir, it is.

Q. And up until, and through, 1953 these cards were being used by your bank, that is Plaintiff's Exhibit 20? A. That's right.

Mr. Bantz: I will offer Plaintiff's 20 and [67] 21, Your Honor.

(Testimony of Marion Babb.)

Mr. Moore: No objection, Your Honor.

The Court: Admitted.

(Whereupon, the said signature cards were admitted in evidence as Plaintiff's Exhibits 20 and 21.)

Mr. Bantz: Would you mark that for identification, please?

The Clerk: Plaintiff's 22.

Mr. Bantz: And will you please mark these additional ones as the next exhibit.

The Clerk: Plaintiff's 23.

Mr. Bantz: Your Honor, I want to call attention that I am not at this time offering 14 and 15 for identification.

Q. Mr. Babb, handing you Plaintiff's Exhibit No. 22 for identification, will you please examine that and if you recognize that tell the court and jury what it is?

A. That is a checking account ledger sheets for Joe and Bertha Palermo for the Security State Bank from June 2, 1947, through November 23, 1949.

Q. All right, now, those records you have in your hand are part of the official records of your bank?

A. They are.

Q. And you brought them here with you? [68]

A. I did.

Q. And it starts with the year 1947 and ends in 1949?

A. That's right.

Q. On this Plaintiff's 22, is that the only record that you have of the checking account during that

(Testimony of Marion Babb.)

period of 1947 through 1949? A. It is.

Q. And all of the checks deposited or drawn would show on this account for those years?

A. They would, yes.

Q. Handing you Plaintiff's 23 for Identification, would you please examine that exhibit?

A. It is a group of checking account ledger sheets for Joe and Bertha Palermo from November 25, 1949, through December 31st, 1953.

Q. And that is from your official records and files at the bank? A. It is.

Q. And part of the records that were brought here with you? A. It is.

Q. Turning the first page of Plaintiff's 23 over, I have drawn a line there on the date of January 3, 1950, is that correct? A. Yes, that's right.

Q. And that is on Plaintiff's 23? [69]

A. That's right.

Mr. Bantz: All right. If Your Honor please, before I ask that this be admitted I have part of one statement with the year 1949 on one side, and on the back I have drawn a line separating 1950, and with the Court's permission I would like to submit the exhibit with the understanding that we will take the portion belonging to 1949 and attach it to Exhibit 22 which is the years of 1947 to 1949.

The Court: All right.

Mr. Bantz: And make it 22B if that is agreeable with you.

The Court: Yes.

Mr. Bantz: Is that agreeable with counsel?

(Testimony of Marion Babb.)

Mr. Moore: Fine.

Mr. Bantz: And then with that understanding I will then offer 23.

The Court: Let me see, 22 hasn't been offered?

The Clerk: No, sir.

Mr. Bantz: In other words, Your Honor, Plaintiff's 23 will be for the years '50 through '53, inclusive?

The Court: I see.

Mr. Moore: No objection on that basis.

The Court: All right.

(Whereupon, said ledger sheets were admitted in evidence as Plaintiff's Exhibits 22 and 23.) [70]

Q. Mr. Babb, handing you Plaintiff's Exhibit 23 and referring to the page which has the date of July 20th, 1953, you see where I am reading from?

A. Yes.

Q. That deposit here shows \$6468.58?

A. That is correct.

Q. Now, a few minutes ago I asked you about the deposit slip, for the year 1953, that was missing?

A. Yes, that is correct.

Q. And do you know whether they found it at the bank? A. I do not know.

Q. But that is on your records and it shows that there was a deposit of \$6468.58?

A. Yes, sir.

Q. And I am asking you if you do find it to forward the deposit slip to my office, is that correct?

(Testimony of Marion Babb.)

A. Yes.

Q. You will do that? A. Yes.

Mr. Bantz: Your Honor, I asked counsel if that deposit slip was delivered to me if we could stipulate it in through the testimony of Mr. Babb, if he could produce that, and he has agreed to if we could produce it.

The Court: All right.

Mr. Bantz: Would you mark each of those [71] papers separately, Mr. Taylor. This one first.

The Clerk: Plaintiff's 24 and 25.

Q. Mr. Babb, handing you Plaintiff's No. 24, would you please examine that and if you recognize it would you state what it is?

A. It is a financial statement dated April 3, 1954, given by Joe Palermo.

Q. And that is from your official records of the National Bank of Commerce at White Salmon?

A. It was given to the Security State Bank, yes.

Q. And who did you get that from?

A. It was signed Joe Palermo.

Q. And did you bring that exhibit with you, Plaintiff's No. 24 for Identification?

A. I did, sir.

Q. And handing you Plaintiff's Exhibit No. 25 for Identification, would you examine that exhibit and if you recognize it state what it is?

A. It is a financial statement dated March 3, 1948, signed by Joe Palermo and given to the Security State Bank.

(Testimony of Marion Babb.)

Q. And did you bring that with you from your official records? A. Yes, I did.

Q. I believe, Mr. Babb, you stated that Plaintiff's No. 24 was 1954. Is that 1954 or 1944? [72]

A. I am sorry, it is April 3rd, 1944.

Q. Thank you. Mr. Babb, do you have any liability ledgers or any other records for the years of 1948 through 1953, in the bank?

A. Yes, liability ledgers.

Q. You did have some liability ledgers?

A. Yes, sir.

Q. What do you mean by liability ledgers?

A. Well, it would show the amount of liability, the amount due to the bank by Mr. Palermo or by a customer.

Q. By customers? A. Yes.

Q. Did he have an account there through the years '50 to '53?

A. Do you mean a liability account?

Q. Yes, a liability account.

A. I do not believe he did, sir.

Q. Calling your attention to Plaintiff's Exhibit No. 23, which is the—Now, what are these called?

A. Checking account ledger sheets.

Q. Checking account ledger sheets. Referring to the date of April 10th, 1953, will you tell me what the balance of cash on hand in the bank is by Mr. Palermo?

A. On April 10th, 1953, the balance was \$57,-527.82.

Q. Now, during the years of '50 through '53,

(Testimony of Marion Babb.)

which Plaintiff's [73] Exhibit 23 covers, would this exhibit include all deposits and all withdrawals of the checking account of Mr. Joe Palermo and his wife? A. It does, sir.

Q. And I assume on here that from the exhibit that Mrs. Palermo could write checks also?

A. Yes, sir.

Mr. Bantz: Mr. Taylor, did I get admitted the signature cards of Mr. and Mrs. Palermo?

The Clerk: Yes, you did, Exhibits 20 and 21.

Q. Mr. Babb, do you have any other records at the bank that you know of from the years 1950 through 1953? A. Not to my knowledge.

Q. Not to your knowledge? A. No.

Mr. Bantz: You may examine, Mr. Moore.

Cross-Examination

By Mr. Moore:

Q. With reference to Identifications 24 and 25, Mr. Babb, being financial statements, I assume you had nothing to do with the taking of either one of those, is that correct? A. I did not, sir.

Q. You merely found those in the bank files?

A. These were in the bank files. [74]

Q. And the purpose for which the statements were given is unknown to you of your own personal knowledge ?

A. Well, I would assume that they were a loan but I don't know.

Q. Do you know whether a loan went through on either one of them?

(Testimony of Marion Babb.)

A. I am sure about '44 but I am not certain about 1948.

Mr. Moore: I see. Thank you.

The Court: Any redirect?

Mr. Bantz: No, Your Honor.

The Court: The court will recess for ten minutes.

(Whereupon, after the afternoon recess, proceedings were resumed as follows:)

Mr. Bantz: Mr. Bates?

MATTHEW BATES

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Would you state your name, please.

A. Matthew Bates.

Q. And where do you live, Mr. Bates?

A. At White Salmon.

Q. And what is your occupation? [75]

A. I am in the Insurance and Real Estate business with my father.

Q. And what is your father's name?

A. Richard Bates.

Q. How long have you lived at White Salmon?

A. I lived there all of my life.

Q. Have you assisted your father in the past in making out income tax returns?

(Testimony of Matthew Bates.)

A. I have.

Q. What did you do to assist your father?

A. I do the copying after he prepares the returns.

Q. What do you mean by "Copy"?

A. Type copies.

Q. You type it up?

A. Yes, I type it up, that's right.

The Clerk: Plaintiff's 26 through 30.

Mr. Bantz: Your Honor, I would like to take a moment to explain that I am using Mr. Bates to identify some documents. I might say his father is an elderly gentleman back here and he had some cataracts removed from his eyes. I am not having him testify as to the facts but as to the handwriting only.

The Court: All right.

Mr. Bantz: I thought I better make that explanation to you. [76]

The Court: Yes.

Q. Handing you Plaintiff's Exhibit 26 for Identification, would you please examine that, Mr. Bates. Have you seen that before?

A. Yes, sir.

Q. And do you recognize the handwriting on the front?

A. No.

Q. Do you recognize the handwriting on the second page?

A. Yes, that is my father's handwriting.

Q. That is your father's handwriting?

A. Yes.

Q. And how about on the third page?

(Testimony of Matthew Bates.)

A. That is my father's handwriting.

Q. Handing you Plaintiff's Exhibit No. 27 for Identification, would you please examine that exhibit. Have you seen that before?

A. Yes, I have.

Q. And where have you seen it?

A. In my father's office.

Q. And there is a group of pages to begin with here, is that your father's handwriting or not?

A. It is.

Q. That is your father's handwriting?

A. Yes, it is.

Q. Now, there are two ledger sheets at the end of that; is [77] that your father's handwriting there?

A. It is.

Mr. Moore: Did he say that they were?

Mr. Bantz: Yes, he said that they were.

Q. Handing you Plaintiff's Exhibit 28 for Identification, will you examine that please. Do you recognize that?

A. No.

Q. Is that your father's handwriting?

A. It isn't my father's handwriting.

Q. It isn't your father's handwriting. Now, in back of Exhibit 28 is a large sheet, is that your father's handwriting?

A. It is.

Q. And this purports to have a date on it of 1951?

A. Right.

Q. Now, handing you Plaintiff's Exhibit 29 for Identification, will you examine that, please. Is your father's handwriting on there anywhere?

A. Yes, sir.

(Testimony of Matthew Bates.)

Q. That is the large sheet on the back of that exhibit? A. Yes, right.

Q. And on the front page, is that his handwriting? A. Yes.

Q. Then, there is a small second sheet and third sheet. Is that your father's handwriting? [78]

A. No.

Q. Now, handing you Plaintiff's Exhibit No. 30 for Identification, will you please examine that? Is that your father's handwriting? A. No.

Q. Do you recognize the handwriting?

A. Not as by my father, no.

Mr. Bantz: May I have Exhibits 3, 4, 5, and 6, please.

The Court: Did the witness testify as to 27? If he did I missed it.

Mr. Moore: Yes, he did.

The Court: Did he identify the handwriting?

Mr. Moore: He said the first group and the two ledger sheets were in his father's handwriting.

The Court: Thank you.

Q. (By Mr. Bantz): Handing you Plaintiff's 27, you did testify about that, is that correct?

A. Yes.

Q. Now, Mr. Bates, handing you Plaintiff's Exhibit No. 3, which is income tax return of 1950, at the bottom is the signature "R. J. Bates" with the date of February 15, 1951; is that your father's signature?

A. Yes, that is my father's signature.

Q. That is your father's signature?

(Testimony of Matthew Bates.)

A. Yes. [79]

Q. Did you type that income tax return?

A. 1951, no, sir.

Q. You didn't type that one? A. No.

Q. But that is your father's signature?

A. Yes.

Q. Referring to Plaintiff's Exhibit 3, where the signature is it reads, "Signature of person, other than taxpayer, preparing this return." Is that correct? A. Right.

Q. Handing you Plaintiff's Exhibit 4, which is the income tax return of Joe and Bertha Palermo for the year 1951, would you please examine that and see if your father's signature appears on there?

A. It does.

Q. And it appears in the place where it says, "Signature of person, other than taxpayer, preparing this return"?

A. That is correct.

Q. And what is that date?

A. February 9, 1952.

Q. Do you recall if you typed that return?

A. It is very possible that I did. My mother was also in the office at that time.

Q. All right, now, handing you Plaintiff's Exhibit 5, which is the income tax return of Joe and Bertha Palermo for [80] the year 1952. Would you please examine that and see if your father's signature appears on the face of that?

A. Yes, it does.

(Testimony of Matthew Bates.)

Q. And does it appear in the same place as the other tax returns? A. Yes, sir.

Q. And what is the date of that?

A. January 28, 1953.

Q. And handing you Plaintiff's Exhibit No. 6, which is the income tax return of Joe and Bertha Palermo for the year 1953, would you see if your father signed that one? A. He did not.

Q. He did not sign that one? A. No.

Q. Is it dated at that place?

A. Yes, February 25, 1954.

Q. And do you recall if you typed that one up?

A. Yes, I did.

Q. And was that prepared in your office?

A. Yes.

Q. And how did you receive the figures and information to put on that income tax return?

A. Oh, Mr. Palermo usually brought us in a——
Mr. Moore: I can't hear you.

A. Mr. Palermo usually brought us a statement on a piece [81] of paper, a statement of his expenses and receipts.

Q. And your father worked them over?

A. That is correct.

Q. And then did your father give them to you?

A. He would prepare a pencil copy of the return and I would make the typewritten copy.

Q. Is there any reason why you recognize the 1953 return?

A. Yes, sir, that was done on our L. C. Smith.

(Testimony of Matthew Bates.)

That is the only typewriter that is in the office and I would recognize it anyplace. I am the only one that does any work on that.

Mr. Bantz: You have got to keep your voice up now.

Q. Now, Mr. Bates, when did you or your father start preparing income tax returns of Mr. Palermo?

A. It would be 1949 for the year of 1948.

Q. Are you still doing the returns?

A. For Mr. Palermo?

Q. Yes. A. No.

Q. When was the last year you prepared the returns?

A. That would be 1954, for the year of 1953.

Mr. Bantz: You may examine.

Cross-Examination

By Mr. Moore:

Q. Were you present when your father first was contacted [82] by Mr. Palermo concerning the doing of his income tax returns? A. In 1948?

Q. Yes.

A. No, I was in high school at that time.

Q. Were you present during the years 1951, 1952, 1953, and 1954 when Mr. Palermo came in to see your father about having him do his '50, '51, '52, and '53 returns?

A. I was in the army during 1951 and so I would have been there during '52, '53, and '54.

Mr. Bantz: I didn't hear. Could not have been there?

(Testimony of Matthew Bates.)

A. No, I would have been there during the year 1952.

Q. (By Mr. Moore): Do you recall whether or not during those years your father discussed with Mr. Palermo the information that he gave him to make up his income tax returns?

A. Yes, I am quite sure that he did. He would go over the statements that Mr. Palermo would present to him and determine, of course, what was to go and what wasn't.

Q. Did he ever ask him to go and get further information, that you know of?

A. I don't know.

Q. Did he ever ask him in your presence to bring in his books? A. No.

Q. Or his cancelled checks or his bank statements? [83] A. No. No.

Q. Do you know approximately how long your father would have worked in 1952, 1953, or 1954 in the compilation of figures doing Mr. Palermo's income tax returns?

A. I don't really know excepting that it was nothing out of the ordinary.

Q. Would he be able to do them in a day?

A. A day of steady work.

Mr. Moore: I think that is all.

Mr. Bantz: That is all. Would you bring your dad up here, please.

(Witness excused.)

RICHARD J. BATES

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Will you state your name, please.

A. Richard J. Bates.

Q. And where do you reside, Mr. Bates?

A. My home is at White Salmon, Washington, near White Salmon, Washington.

Q. And how long have you lived there?

A. Forty-nine years.

Q. And what is your occupation? [84]

A. Well, for—I have always had a little farm since I have been there and I am in the insurance and real estate business.

Q. And have you been in the past years doing income tax work? A. I beg your pardon?

Q. Have you prepared income tax returns in the past; I mean during the last twenty years have you been doing it? A. Yes.

Q. Will you tell the Court and the jury when did you start making out income tax returns?

A. Well, I made out, of course, my own in 1913 and I started doing the public work in 1936, I think it was.

Q. And did you make out income tax returns for the Year of 1948 through 1953? A. I did.

Q. And through 1954? A. I did.

Q. Have you made out income tax returns for Joe Palermo?

(Testimony of Richard J. Bates.)

A. I made out—I think it was in 1948 or 1949 when Joe—when I started making them out for Joe Palermo, and the last one was in—it would be in 1954, I think it was.

Q. You were paid by Mr. Palermo to make out his income tax returns? A. I was. [85]

Q. For the years of 1950 through 1954, do you recall you were paid each year?

A. I was what?

Q. Were you paid each year from 1950 to 1954?

A. I was.

Q. Do you recall how much?

A. Well, it was varied. Earlier it was less money and the last two times I think Joe paid me \$20.00.

Q. You know Mr. Palermo, do you?

A. Yes, I do.

Q. Are you having a hard time seeing now, Mr. Bates? A. Very much so.

Q. You just had some work done on your eyes?

A. I just had a cataract removed from my right eye, and I have a cataract on my left eye.

Q. I won't ask you if you can't see; is Mr. Palermo in the courtroom, do you know?

A. I asked my son if Joe was here and he told me he was.

The Court: No, you can't repeat that.

Mr. Bantz: That is all right. If you can't see him, don't tell. I don't want to know what your son tells you. You just keep within what you know.

Q. Mr. Bates, how many income tax returns a year have you generally done in the past ten years?

(Testimony of Richard J. Bates.)

A. It would average around 150. [86]

Q. 150 a year? A. Separate ones.

Q. And who do you do those for anyway, Mr. Bates? Do you do them for ordinary people like ranchers, fishermen and so forth?

A. Farmers, loggers and merchants.

Q. In that locality where you live?

A. Yes.

Q. Down around Bingen mostly?

A. Yes; White Salmon and the surrounding country.

Q. Where is your office, Mr. Bates?

A. Bingen.

Q. Bingen, Washington? A. Yes.

Q. Now, we have in evidence some income tax returns that were prepared by you for the years of 1950 through 1953 that have been identified by your son. Did you hear him testify?

A. I heard him at a distance. I heard him say—give the answers partly, not all of his answers.

Q. Did you prepare the income tax returns of Mr. Palermo for the years 1950, '51, '52, '53?

A. I did.

Mr. Bantz: You will excuse me if I stand here, will you, your Honor, while I talk to him? [87]

The Court: That is all right.

Q. Did you also prepare his income tax return for the year 1954, or do you recall?

A. I don't recall. This is '55, '56—I don't recall.

(Testimony of Richard J. Bates.)

Q. Did you prepare an income tax return for him in 1949? A. I did.

Q. Now, Mr. Bates, I asked you to bring some papers to me at the Grand Jury of which you delivered to me certain papers, and I am going to hand them to you by exhibit—I don't know whether you can read them but I will try and have you look at them. Now, first, I will hand you Plaintiff's Exhibit 26 for Identification, which your son stated that the last two pages had your handwriting and figures on it. Now, I don't know, can you see the paper at all?

A. Oh, yes; I can see the paper. I can see the writing, I might say. This doesn't look like mine.

Q. All right; that isn't yours? A. No.

Q. All right; on Plaintiff's Exhibit 26 for Identification there is a marking of "1949." Can you see the "1949"? A. Yes; I see it.

Q. Is that your writing?

A. It looks like my writing.

Q. And then at the bottom of it is the name "Joe Palermo," [88] can you see that?

A. Yes. Yes; that is not mine.

Q. That is not your writing? A. No.

Q. All right. Now, handing you Plaintiff's Exhibit 27 for Identification, your son testified that certain papers in the front were your handwriting?

A. I can see those. Those are.

Q. Can you see those?

A. Yes; I can see. Yes; they are.

Q. Then there are some other matters in here,

(Testimony of Richard J. Bates.)

and there it says, "Received From Joe Palermo." Can you see that?

A. Yes; I can see it. I can't see what is written.

Q. And on the top of the paper for the year, "1950—Joe Palermo." Now, each year, Mr. Bates, for the years 1950 and 1951, did Mr. Palermo bring you in work sheets? A. Yes; he did.

Q. Did you use those work sheets in making up your income tax return? A. Yes; I did.

Q. And did you do the same for the years of 1952 and 1953? A. Yes, sir.

Q. Now, handing you Plaintiff's Exhibit No. 29 for Identification, your son testified that the first page had your handwriting on it and the last page. Now, looking at [89] the second page here, can you see any writing on there?

A. Yes; I can see the writing. It isn't my writing.

Q. It isn't your writing? A. No.

Q. Now, on the back page there is certain writing. Can you recognize that?

A. That might be my writing there, that is not. That is in there.

Q. On the second page of that it says, "Trk 8500," that is different writing?

A. Yes; I was taking that for depreciation.

Q. You were taking that for depreciation?

A. Yes.

Q. Now, can you recognize these sheets as part of the paper or the paper that was brought into you by Mr. Palermo? A. Yes.

(Testimony of Richard J. Bates.)

Q. Now, handing you Plaintiff's 30 for Identification, would you see if you can see that at all?

A. It isn't my handwriting.

Q. It isn't your handwriting? A. No.

Q. Now, is this your writing up on top here where it has "Joe Palermo 53"? A. Yes, sir.

Q. All right. Then, in a different writing it says, "On 4 [90] houses." Can you read that?

A. It looks a little bit like my writing. It isn't very plain.

Q. Now, looking on the back on the second sheet it says "Rented houses" in pencil. Can you see that?

A. Yes.

Q. And now there are circles around certain figures, did you——

A. That was the gross on his rented houses.

Q. All right. Now, that is for the year 1953. When Mr. Palermo brought in these figures did you use those in the preparation of his income tax return? A. Yes; I did.

Q. Is that true with the years of 1949, 1950, 1951 and 1952?

A. Those are the ones that I looked at, yes.

Q. And to the best of your knowledge are these the only papers that you have that he gave to you?

A. Yes.

Q. I notice in here, Mr. Bates, one of these years, I believe the year 1952 there is, at least not obvious to me, a writing by Mr. Palermo; how would you have obtained that information?

A. It may have been lost in my office.

(Testimony of Richard J. Bates.)

Q. But do you recall if you had a statement with the figures on that you used on the income tax return for Mr. Palermo? [91]

A. I would have used one.

Q. He would have given you one? A. Yes.

Q. Now, tell me, did you always discuss each of the year's sheets that he turned over to you in connection with his income tax return?

A. I have always had a discussion with him when he came in.

Q. Did he sit down and you talk about the depreciation or any other things concerning his income tax return? A. Yes. Yes.

Q. Did he generally come to your office?

A. He did.

Q. When the income tax return was signed, do you recall where that income tax return was signed?

A. Nearly every time—every time I knew, they came and signed them at the office, there may have been one that he took away but they signed them at my counter in my office.

Q. Now, did you go over the income tax returns together at the time they signed them?

A. No; I didn't.

Q. Did you discuss with Mr. Palermo what his gross income and expenses were on the income tax return, Mr. Bates?

A. I always ask a customer if that is all that they had of income. Quite often I find from my own experience that [92] they were entitled to other de-

(Testimony of Richard J. Bates.)

ductions which I gave them, like some of them failed to report depreciation. I always wanted to be sure that they had that depreciation allowed.

Q. Did you discuss this matter with Mr. Palermo about other income?

A. I did. I remember one time that he had a house or one or two houses, rather, and I asked him about that and he said, "Oh, sure, I forgot that."

Q. You knew that he had rental houses as well as the logging business? A. Yes. Yes.

Q. Did you talk to Mr. Palermo about filing estimates, Mr. Bates?

A. I am sure that I did. I always did tell every—every client that he had to make out an estimate.

Q. Now, you have done other income tax returns for small loggers or loggers that work around there—around your community, is that right?

A. That's right.

Q. Mr. Bates, did you rely on the records that Mr. Palermo turned over to you in the making out of his income tax return? A. I did.

Q. And did you make any large changes or appreciable changes [93] in those sheets that he turned over to you? A. No; I did not.

Q. Would there be any change, maybe some change on depreciation or something on there?

A. Well, I just don't recall that. If there was, it was very small.

Q. Did you make any changes to his gross income or expenses? A. No.

Q. What was your answer?

(Testimony of Richard J. Bates.)

A. No. Not material.

Q. Not material? A. No.

Q. All right. Mr. Bates, do you think you could see the income tax returns if I gave them to you; could you read those?

A. I don't believe so.

Q. You don't believe so?

A. I might recognize some of it; not the figures very well.

Q. Now, did Mr. Palermo bring any books or records into you other than what we have been discussing? A. No, sir.

Q. Did he bring any checks into you?

A. No.

Q. Did he bring any cancelled checks in to you?

A. No; he did not. [94]

Q. Now, did you ask him for any?

A. I did not.

Q. You made up his return from what he turned over to you? A. Yes.

Q. To the best of your knowledge, Mr. Bates, do the figures that are on these sheets, work sheets that are here, do they compare closely or exactly with those on the income tax return that you made up?

A. As close as I could make them.

Q. As close as you could make them?

A. Yes.

Q. Now, you say that he might have come to your house to sign the income tax return; do you mean your house or your office?

(Testimony of Richard J. Bates.)

A. He did not come to my house. I don't recall any time. It was always in my office.

Q. Now, your office, do you have a private office there yourself?

A. I have a room in the back of the main office, yes.

Q. Did he go back there or in front?

A. He signed them at the counter. He always came to the back office when we made them out.

Q. All right; he would come to the back office when you made the returns out? A. Yes. [95]

Q. Was Mrs. Palermo with him when he signed the returns?

A. Yes. I recall her being there a couple of times, yes.

Q. To your knowledge, did he ever file any estimates? A. Any what?

Q. Any estimates. Did he file any estimates?

A. Not to my knowledge. Not to my knowledge.

Q. Mr. Bates, did you handle his income tax return in the ordinary course of your other income tax return business? A. I did.

Q. Did you have any other business with Joe Palermo?

A. Oh, I have sold some land for him once.

Q. When was that, do you recall?

A. That was last year, I believe, yes.

Q. Last year, 1956?

A. 1956, I believe, yes.

Q. Did you have any insurance business with

(Testimony of Richard J. Bates.)

him? A. No insurance, no.

Q. In other words, other than the land your only business with him was the income tax business?

A. Yes.

Q. When Mr. Palermo came in to sign the returns, Mr. Bates, did he know or did you have any discussion of how much tax he was paying?

A. No.

Q. Did you show him on the return how much tax he had to pay? [96]

A. I don't recall of showing him because he knew where to find it.

Q. He knew where to find it?

A. Yes; I am sure of that. May I add one thing, too?

Q. Is it to a question I asked? A. Yes.

Q. All right. You asked me a few moments ago about my writing insurance and so on. I have written licenses. I don't do that work but Mat does it for different loggers that come and I think we have written the licenses for Joe at different times.

Mr. Bantz: That is all right. Your Honor, at this time I will offer in evidence Plaintiff's 27, 28, 29, and 30, which are the work notes of Mr. Bates concerning the years 1950, '1, '2, '3, and I don't know whether counsel has seen them or not.

The Court: Better let him look at them.

Mr. Velikanje: Is that No. 27 for '50 or '52?

Mr. Bantz: 27 is for '52.

Mr. Velikanje: 28, '51?

Mr. Bantz: No. 27 is '50. It was covered up, I

(Testimony of Richard J. Bates.)

am sorry. It has got marked "50" on it. Your Honor, I will reserve the over so that we can look at these after court if there is any question about it. It appears one sheet should have been on one of the others. Your Honor, in order [97] to have the identification I could have Mr. Bates come down and look at Mr. Palermo here or have the right of calling young Mr. Bates, whichever you want me to do.

Mr. Moore: I don't think there is any question that he is sitting beside me.

Mr. Bantz: For the record, I would like to have some identification here.

The Court: Well, you can have the young man come up and identify him.

Mr. Bantz: All right; you may inquire.

Cross-Examination

By Mr. Moore:

A. Mr. Bates, when did you first become acquainted with Mr. Palermo?

A. I am not sure whether it was the first year I worked for him or I met him at the Eagles Lodge.

Q. You and Mr. Palermo are both members of the Eagles Lodge? A. What?

Q. You and Mr. Palermo are both members of the Eagles Lodge at White Salmon?

A. I am.

Q. And he is too? A. I believe so.

Q. Going back over these information sheets, Mr. Bates, when Joe first came into your office to

(Testimony of Richard J. Bates.)

have you make [98] the income tax return, did you tell him what you wanted him to bring in?

A. I just cannot remember whether I used those words or not. It is a good many years ago.

Q. You don't recall whether he came in with the information?

A. I am sure he brought them in. I am sure he brought them in.

Q. He brought information in?

A. Some information, yes.

Q. And in the course of your doing his income tax returns in these various years did you ever inquire further as to certain income items or expense items?

A. He always gave me the gross—his gross earnings and I worked it down from that.

Q. If there was going to be something included in his tax return as an expense, did you make the determination of whether it was a legitimate expense or not?

A. I did.

Q. And in setting up the depreciation schedule did you determine what period of time a certain piece of equipment would be depreciated?

A. I did.

Q. Did you ever discuss with him whether or not certain items might or might not be income?

A. Might not or be income?

Q. Yes. [99]

A. I—I don't remember of his having anything of that kind.

Testimony of Richard J. Bates.)

Q. I believe on Identification 26 the testimony was that the first page was somebody else's writing and the last two pages were yours? A. Yes.

Q. Now, this last page that I am showing you is your writing? A. Yes; that is my writing.

Q. Now, I note on the first page is marked "1949" up here in the corner?

A. That is mine.

Q. And you can't see underneath here, it says, "Gross Earnings" in somebody else's writing, \$40,-31.64, that is on the first page. That is not your writing, \$40,200.00, roughly, and on the last page is written \$48,670.37. Now, do you recall in 1949 where that change might have come from?

A. I evidently used the 1948.

The Court: The witness will have to speak up a little bit louder. I am sure that the jurors can't hear.

Mr. Moore: Yes.

Q. Do you recall where that came from?

A. No; I do not. I do not.

Q. Did you ever request from Mr. Palermo anything more than these slips of paper?

A. I have no recollection of asking him for more. I made [100] deductions though from his statement, I remember, for some money that he loaned to a private fellow for a loan which I told him wasn't deductible.

Q. When he came in each year, did you discuss with him what pieces of equipment he may have acquired or sold in the previous year?

(Testimony of Richard J. Bates.)

A. Yes; he always kept me posted, I thought.

Q. He brought you that information?

A. I thought he always kept me posted, yes.

Q. You have done income tax returns for other loggers?

A. I can't hear you.

Mr. Moore: Too much bounce.

Q. You have done other income tax returns for other loggers in that area?

A. Oh, yes; quite a number.

Q. On the basis of Mr. Palermo's activities down there, did it appear to you when you were making out his income tax returns that his gross earnings and his expenses and his net earnings were reasonable for the activities that he was then carrying on?

A. Yes. Yes; he was—he was one of the larger operators. That is when I say "logger," I mean they fall and buck as well as own some forest there. Fallers and buckers run with the fellows that are really loggers and they do light trucking, and Joe was one of the larger ones. [101]

Q. And on the basis of what he was doing his gross appeared reasonable?

A. Yes; larger than most of them.

Q. Well, on the basis of that gross did his net appear to be reasonable?

A. Well, he had a lot of expenses. His expenses grew up as well but I would say yes.

Q. You say you have known Mr. Palermo since about 1948, roughly?

A. Since 1948 or 1949, roughly.

(Testimony of Richard J. Bates.)

Q. And are you acquainted with his reputation in the vicinity of White Salmon and Bingen?

A. I have never heard anything detrimental against him.

Q. You have never heard anything against Mr. Palermo at all? A. I beg your pardon?

Q. You have never heard anything against Mr. Palermo at all?

A. No; I have never heard anything against him.

Q. Do you know whether or not he has a reputation for honesty in that area?

A. As far as I knew.

Q. Did you know anything about Mr. Palermo's work; in other words, what he personally did in the operation of his business?

A. Well, he seemed to be a successful logger, that is more than you can say about some of [102] them.

Q. Do you know whether or not he was a hard-working logger?

A. Well, I have never seen him in the woods and so I don't know.

Q. I see. These amounts that Joe paid you to do his income tax return, he would bring the information in and you would make up the return and then tell him how much he owed?

A. Yes; that's right.

Q. And then he would pay you according to how much you said it was worth, is that right?

A. Yes. Yes.

(Testimony of Richard J. Bates.)

Q. In making up income tax returns you said you do about 150 a year? A. Yes.

Q. Do you do all of the returns——

A. I beg your pardon?

Q. Do you make all of these returns in about the same way? A. Yes.

Q. In other words, you rely on what the people bring and then you make up the returns from that?

A. Some of them bring in their books, that is their expense books and I use that the same as the sheets of paper.

Q. Some of those people who bring in the expense books, or the books and records, do they bring them in at your request or do they just bring [103] them in?

A. No; they just bring them in. They have been bringing them in for years.

Q. You have never asked anyone to bring them in? A. No.

Mr. Moore: I think that is all.

Redirect Examination

By Mr. Bantz:

Q. Mr. Bates, you reported on the income tax return of Joe Palermo the income that he told you that he had made, the gross income during the year, is that correct? A. Yes.

Q. And you reported on there the expenses that he told you, is that right? A. That's right.

Q. Did you know what business Joe Palermo was in? A. Yes; White Salmon——

(Testimony of Richard J. Bates.)

Q. No; what business was he in?

A. I always considered him a logger.

Q. Did his income tax return, did it show he was a logger and in the logging business?

A. Yes; it did, on the top of the page.

Q. No; I mean, did the schedules "C's" show that he had logging equipment?

A. Yes; I am sure that it did, that he had——

Q. He had depreciation? [104]

A. Yes; depreciation I was trying to say.

Q. He made some money other than logging, though?

A. The only other money that he made was out of his houses.

Q. And did you include that on his income tax?

A. Yes; I did.

Q. Mr. Bates, did you ever know how much money Mr. Palermo had in the bank, cash in the bank?

A. No.

Mr. Bantz: That is all.

Mr. Moore: Did you ever ask him how much money he had in the bank?

A. I never did.

Mr. Moore: That is all.

The Court: Any other questions of this witness?

Mr. Bantz: He may be excused for the time being. We are not going to excuse him——

The Court: You wish to have him around in the morning?

Mr. Bantz: Yes; I would like to have him around.

The Court: All right; you may make that arrangement with him.

Mr. Bantz: I would like to recall Matthew Bates for just a moment.

The Court: All right. [105]

MATTHEW BATES

recalled as a witness on behalf of the Government,
was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Mr. Bates, you are the same gentleman that was sworn and was on the stand previously?

A. Yes; that is correct.

Q. We have had some discussion about Joe Palermo and his income tax returns. Is the Joe Palermo concerned with your father and yourself in the courtroom?

A. He is.

Q. And would you point him out?

A. He is sitting at the table there.

Q. Behind counsel?

A. Yes; right.

The Court: Behind Mr. Moore?

Q. Behind Mr. Moore there?

A. Yes; right.

The Court: All right.

Mr. Bantz: That is all.

Mr. Moore: No questions.

The Court: All right; you may step down.

(Witness excused.) [106]

GUERTIN CARROLL

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Would you state your name, please?

A. Guertin Carroll.

Q. And where do you reside, Mr. Carroll?

A. Seattle.

Q. And what is your business?

A. I am Seattle Branch Manager of the American Bonding Company of Baltimore.

Q. And how long have you had that position?

A. Nine years.

Q. Were you subpoenaed in this case?

A. I was.

Q. And you were asked to bring some records with you? A. That is correct.

Q. And did you bring them with you?

A. Yes; I did.

Q. What business is your company engaged in?

A. In the fidelity and surety business.

Q. Do you furnish bonds for loggers and what we call logger bonds?

A. That is correct. [107]

Q. Now, do you have some records there concerning Joe Palermo?

A. Yes; the two documents that under the subpoena I was to bring.

Q. These are two separate——

(Testimony of Guertin Carroll.)

A. That is correct, for two separate bonds, timber cutting contract bonds was all.

Q. Will you tell me the dates so I will have something on here to go by?

A. This bond was issued March 12, 1953, but it was cancelled flat, we might say, which means it is thrown out, which was the first bond we ever issued for him, and this bond was February 3rd, 1954.

The Clerk: Plaintiff's 31 and 32.

Q. Mr. Carroll, do you have an agent or someone you do business with at White Salmon, Washington?

A. Yes; we do.

Q. And who is that?

A. Keith McCoy, but I would like to explain that the Portland Branch handled them now because of their closer proximity, but I would like to explain that at the time of the issuance of the bond Keith McCoy was the local representative.

Q. Is that the McCoy Insurance Agency?

A. Yes. [108]

Q. Do you know Wally Legler?

A. Yes; I do.

Q. And who is he associated with?

A. He is associated with Keith McCoy.

Q. Did he handle policies for you?

A. He did at that time the same as Keith McCoy in the same office.

Q. Mr. Carroll, when your company makes a person a bond such as a timber bond like I have here or a Reforestry Bond, do they require a financial statement?

Testimony of Guertin Carroll.)

A. That is the practice, yes.

Q. From the individual obtaining the bond?

A. Correct.

Q. And, specifically, are the cash items verified?

A. On any new application where we don't know the background of the man our practice is to verify the bank account, perhaps some of the accounts receivable so as to be certain of the statements that are made and on which we are going to rely in the issuance of the bond.

Q. Now, handing you Plaintiff's 31 for Identification, examine that and just explain what that is?

A. That is an application for a \$1,600.00 bond to the State of Washington in connection with the reforestation on 200 acres. For some reason our file has been transferred to our Portland office. It might be that because Mr. [109] Palermo decided against it, but that bond wasn't required and it was returned to us and we closed the file and cancelled flat.

Q. There was no reason that he could not receive it?

A. No; that is correct, but it was returned by him.

Q. What is the date?

A. March 3, 1953, was the date we issued it.

Q. How did you receive that Plaintiff's 31?

A. It came through the mail from Keith McCoy.

Q. And he is one of your agents?

A. That is correct, at White Salmon.

Q. Now, handing you Plaintiff's 32 for Identification, would you examine that, please?

(Testimony of Guertin Carroll.)

A. That is an application for bond to the State of Washington, \$2,800.00, commonly called in our business a timber-cutting contract bond, issued by us February 1st, 1954, and containing financial statement.

Q. Where did you get that from?

A. That is from our Portland office at my request. They returned the application at my request. That came to us originally through the mail from Keith McCoy and had Joe Palermo's signature.

Q. In other words, both of these did come to you in the regular course of business to Seattle?

A. Yes; that is correct. [110]

Q. And they are regular applications concerning timber bonds? A. Yes.

Q. And I notice on each application there is a statement of assets and liabilities?

A. That's right.

Q. And you require that of certain individuals that request bonds from you?

A. Yes; that's right. On certain classes we waive it but not of the timber-cutting nature.

Q. On this Exhibit 31 for Identification in red chalk pencil there is some writing. Can you read what that is?

A. Yes; I both remember it and recognize it. That is my own red pencil that I used to keep on my desk. It says, "Verified by Agent," and I remember I had some information about it and when it came in I would write there as you see, "Verified by Agent," after the conversation on it.

(Testimony of Guertin Carroll.)

Q. And who did you have verify it?

A. I think it was Keith McCoy. It could have been Wally Legler.

Q. They work together?

A. That is right, in the same office. It could be either one.

Q. You asked, however, for somebody to verify the cash deposit there?

A. Yes; that is right. That was the first application received and I had no background on the man and I recall [111] clearly telephone Keith McCoy to find out whether that bank account could be verified, and he stated that it had already been verified.

Q. Have you ever furnished any logging bonds for Joe Palermo?

A. Yes; we have; four or five.

Q. What dates, generally, do you remember?

A. Why, that first one never—I have forgotten if one was 1953.

Q. That is Exhibit 31, 1953?

A. Yes; Exhibit 31, that was 1953, that is the one that I said was cancelled flat, meaning returned not wanted by Mr. Palermo. Well, then, I don't know that this in order of date——

Q. Well, let me ask you, during the dates from 1950 to February 3rd of 1954, which is Plaintiff's Identification 32, have you issued any bonds to Joe Palermo?

A. February, 1953? Let me just check these dates.

Q. February, 1954.

(Testimony of Guertin Carroll.)

A. 1954? Here was one, May 21st, 1954, timber-cutting bond in the State of Washington. June 21st, 1954.

Q. Now, during the year 1953—— A. Yes.

Q. ——I take it then you had the applications that you have here that have been subsequent to the date of February, [112] 1954?

A. That is correct.

Mr. Bantz: I am not going to offer them now. You may examine.

Cross-Examination

By Mr. Moore:

Q. In the normal course of events, Mr. Carroll, on a matter such as this timber bond, is the determination of the issuance of the bond in your office?

A. Myself, personally.

Q. Yourself, personally?

A. Yes; correct.

Q. And you rely solely on the application?

A. Plus our investigation. These were not large bonds or we would have made a more thorough investigation, but here were small amounts involved and verification of the bank account was made and I had no hesitancy.

Q. I assume that your agent also advised you whether or not he recommended the bond when he sent the application in?

A. I think that can be presumed. I couldn't recall the detail but I think he would not have offered

Testimony of Guertin Carroll.)

t if he didn't think it was acceptable, that is right.

Q. Is there any difficulty normally in obtaining those bonds as opposed to other types of bonds?

A. Well, not especially if there is background or experience [113] and some financial responsibility. Someone that started their business with very little capital would have difficulty. As I said before, these are all small, and if we would issue a larger one we would want to go into it more thoroughly.

Q. In other words, a man seeking a timber bond more or less has to prove himself to you before you issue the bond?

A. Yes; if he wasn't more or less acceptable from the moral viewpoint as well as from the financial we would have a considerable time handling it.

Mr. Moore: That is all.

Mr. Bantz: That is all.

(Witness excused.)

WALLACE LEGLER

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Will you state your name, please?

A. Wallace Legler.

Q. Where do you work, Mr. Legler?

A. Keith McCoy insurance office at White Salmon.

(Testimony of Wallace Legler.)

Q. And where do you reside?

A. At White Salmon. [114]

Q. And how long have you worked for Keith McCoy?
A. Ten years.

Q. And what is your job with Keith McCoy Insurance Agency?

A. Oh, General Office Manager and solicitor.

Q. What type of agency is the Keith McCoy Agency?
A. All lines of insurance.

Q. Does that include bonds?
A. Yes.

Q. That is considered an insurance?

A. Yes.

Q. Do you know Joe Palermo?
A. I do.

Q. Is he here in the court room?

A. Yes; he is.

Q. How long have you known him?

A. I would judge at least eight years.

Q. Handing you Plaintiff's Exhibit 31 for Identification, Mr. Legler, would you please examine that? Have you seen that before?

A. Yes; I have.

Q. And where did you see it?

A. At the office.

Q. And who was present at the time?

A. Joe Palermo and myself.

Q. All right. And is that considered an application? [115]
A. Yes, it is.

Q. And just tell me, was that application filled out in your presence?
A. Yes; it was.

Q. Did you fill it out?
A. Yes; I did.

Q. And I notice there are numerous figures and

(Testimony of Wallace Legler.)

Writing on there; who told you what to put in there?

A. Joe Palermo came and gave me the information.

Q. And you put it onto the sheet?

A. Yes; I did.

Q. Now, what was the date that this bond application is considered to be effective, or did you make it?

A. Assuming that the bond was accepted by the insurance company, I wish to have them make it effective as soon as upon receipt of the application and approval by them.

Q. Do you recognize the signature on the back and there? A. Yes; I do.

Q. And was that signed in your presence?

A. Yes; right.

Q. And that is the signature of Joe Palermo?

A. Yes; it is.

Q. And there is a financial statement of assets and liabilities? A. There is. [116]

Mr. Bantz: Your Honor, I will offer Plaintiff's 31 into evidence.

Mr. Moore: May I inquire?

The Court: Yes; all right.

Q. (By Mr. Moore): Now, is Plaintiff's 31 the only copy that was made of this application?

A. No.

Q. There was another copy made? A. Yes.

Q. And that was what; retained in your office?

A. It is.

(Testimony of Wallace Legler.)

Q. I notice that the date is blank, and there is no witness on this. Would this copy be the one that would be executed without the witness' signature and a date on it?

A. No; I don't believe so. That particular file I—I drew up a work sheet on it, and that is what we have in the office.

Q. The only date that I can see on here, Mr. Legler, is what appears to be 3/12/53. Is that your writing? A. No.

Q. So the exact date when this may have been taken, you don't recall, is that correct; I mean, do you recall? A. Yes; I do.

Q. Was it in March of 1953? [117]

A. Yes; it was March 7th.

Q. March 7th of 1953? A. Yes.

Mr. Moore: All right; I have no objection.

Mr. Bantz: May it be admitted, your Honor?

The Court: Yes. That is 31?

Mr. Bantz: Yes, your Honor.

The Court: All right; it may be admitted.

(Whereupon, said bond application was admitted in evidence as Plaintiff's Exhibit No. 31.)

Q. (By Mr. Bantz): Now, Mr. Legler, showing you Plaintiff's Exhibit 31, there is a notation on it that says under "Current Assets," "Cash in White Salmon Branch National Bank of Commerce \$50,000.00," and in red pencil it says "Verified by Agent." Are you the agent that verified that?

(Testimony of Wallace Legler.)

A. I am.

Q. How did you verify the \$50,000.00 cash?

A. I went over to the bank and asked the manager, Mr. Babb, if he had that much money in the bank and Mr. Babb said that he had in excess of \$50,000.00.

Q. All right. Now, referring again, below there is—this writing I take it is yours, did you [118] testify? A. Yes.

Q. Now, there are items in here like rentals and 1,500 acres of timber and the vacant lots in White Salmon and so forth? A. Yes.

Q. Where did you get that information from; in your office from what source?

A. Well, I got it from Mr. Palermo while he was in the office.

Q. And then you transposed it right onto here?

A. Yes.

Q. Now, handing you Plaintiff's 32 for Identification, will you examine that exhibit, please? What is the date now of that exhibit?

A. February 3rd, 1954.

Q. And do you recognize that exhibit?

A. Yes; I do.

Q. And where was that exhibit made up?

A. In our office at White Salmon.

Q. And was that made up by you or by someone else in the office?

A. It was made up by Keith McCoy.

Q. Do you recognize his writing?

A. It is printed.

(Testimony of Wallace Legler.)

Q. Or his printing? [119] A. Yes.

Q. All right. And do you recognize the signature on the back? A. Yes, I do on the back.

Q. And do you recognize the signature of Joe Palermo? A. Yes.

Q. And Plaintiff's 32 is the same type of bond application as Plaintiff's Exhibit 31, the one you just had previously? A. Yes, it is.

Mr. Bantz: You may examine.

The Court: Any other questions of this witness?

Mr. Moore: Yes, I have one question, Your Honor.

Cross-Examination

By Mr. Moore:

Q. In making up Exhibit 31, the information that you got from Mr. Palermo on property values, did you ask him to give you the property values at cost or at market value?

A. Conservative market value.

Q. At a conservative market value?

A. Yes.

Q. And at that time there was no check made of Mr. Palermo's books to ascertain whether his indebtedness was more or less; you merely asked him what he owed in general?

A. Yes, I [120] did.

Q. It more or less limited it to large sums that he might owe; in other words, you weren't interested in small bills or current bills?

A. Do you mean monthly living?

(Testimony of Wallace Legler.)

Q. Yes. A. Yes, to some extent.

Q. You did go into that to some extent?

A. Well, as a general practice I usually ask people what their average monthly expenses are and then we use that as current items.

Mr. Moore: Yes. I think that is all.

Redirect Examination

By Mr. Bantz:

Q. Mr. Legler, except for the item of \$50,000.00 cash that you verified did you rely then on the statements given you by Mr. Palermo?

A. Yes, we did.

Q. And that is customary? A. Yes.

Mr. Bantz: I have no further questions.

Recross-Examination

By Mr. Moore:

Q. Did you recommend the issuance of that bond by your company?

A. I don't recall definitely saying it but I do know that as [121] a matter of practice when we know an individual and by reputation he is a good reasonable responsible individual and he is a good logger, that I did do so. And the particular type of policy or bond it has been our experience that the bonding company is not interested in issuing them to, you might say, the "fly-by-nighters," and so the company has recommended the issuance of bonds that we have submitted.

(Testimony of Wallace Legler.)

Q. As far as this particular one is concerned you didn't recommend that it not be issued on the basis of information that you had on the financial statement as well as the information you had from Mr. Palermo, did you make use of that?

A. Yes, that's right.

Q. And what was that?

A. We did recommend the issuance of the bond.

Q. And on that recommendation based upon your knowledge of Mr. Palermo, it was your knowledge of Mr. Palermo in addition to the financial statement that caused you to issue this bond or recommend its issuance?

Mr. Bantz: Your Honor, I am going to object to putting him on as a character witness at this time. They can put him on as a character witness at the proper time.

The Court: That is right, you can make him your witness as to character, if you wish. [122]

Mr. Moore: I did not intend to make him a character witness.

The Court: I think he may state that they relied upon his knowledge of this defendant's reputation and so on, but I don't think he should state what it was. It wouldn't be the best evidence.

Mr. Moore: I see. That is all.

Mr. Bantz: That is all.

(Witness excused.)

The Court: It is time to suspend. The court will now adjourn, ladies and gentlemen until tomorrow

morning at ten o'clock, and remember what I said about not discussing the case among yourselves or with anybody else.

July 24, 1957, 10:00 A.M.

The Court: Proceed.

Mr. Bantz: Mr. Taylor, would you mark that as Exhibit 19-B, please.

The Clerk: How about 19-A.

Mr. Bantz: Or "A," pardon me.

The Clerk: This is an additional deposit slip, Your Honor, 19-A; and I have also marked before court convened, Plaintiff's 33 and 34. [124]

The Court: You have already marked them?

The Clerk: Yes, your Honor.

Mr. Moore: No objection to 19-A.

The Court: All right.

Mr. Bantz: I will offer it in evidence.

The Court: That is 19-A?

Mr. Bantz: Yes, 19-A. Your Honor, that is the deposit slip for \$6,468.00 in the National Bank of Commerce that I was talking to Mr. Babb about yesterday. It was one that he had not found when he delivered the records up here.

The Court: Yes. There is no objection?

Mr. Moore: No objection.

The Court: It will be admitted.

(Whereupon, said deposit slip was admitted in evidence as Plaintiff's Exhibit No. 19-A.)

Mr. Bantz: Would you call Mr. Zunke.

WILLIAM ZUNKE

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Would you state your name, please?

A. William Zunke. [125]

The Court: Will you speak up, please, Mr. Zunke, it is hard to hear in this room.

A. William Zunke.

The Court: All right.

Q. And where do you live, Mr. Zunke?

A. White Salmon.

Q. And how long have you been a resident of White Salmon?

A. Oh, I have been there this last time since '54.

Q. Since 1954. You lived there previously, did you?

A. Yes, sir.

Q. And what is your relationship between Mr. Palermo and yourself?

A. He is my son-in-law. I am his father-in-law.

Q. You are his father-in-law? A. Yes.

Q. In other words, your daughter is his wife?

A. That's right.

Q. Has Mr. Palermo in the past worked for you?

A. Not lately.

Q. No, I mean a long time ago?

A. Yes, he has.

Q. When was that?

A. The first time he went to work for me in '32. He worked for about six months and then he had

(Testimony of William Zunke.)

to leave in '32. Then, he went to work for me in '34 and he worked for me [126] until November '47.

Q. All right, now, in November of '47, where was he employed by you?

A. At White Salmon, Washington.

Q. In what business were you engaged?

A. Logging.

Q. In what business have you employed him?

A. Logging.

Q. In other words, your business is logging?

A. Yes, sir.

Q. Are you still engaged in the logging business?

A. Yes, sir.

Q. Mr. Zunke, did you assist your son-in-law in getting started in the logging business?

A. Well, I don't know how to answer that. I sold him some equipment.

Q. Did you sell some equipment on time?

A. Yes, I did.

Q. So he could get started?

A. I sold him some equipment on time.

Q. And he paid you for that, is that right?

A. Yes.

Q. I mean it was a regular business transaction between you and your son-in-law?

A. Yes, sir. [127]

Q. Now, when was it that he started in business after that as far as you were concerned?

A. Well, I sold him. I sold him the equipment in November, '47.

Q. Tell me what did you sell him?

(Testimony of William Zunke.)

A. Chevrolet logging truck and trailer and logging jammer.

Q. Chevrolet truck? A. And trailer.

Q. And trailer? A. Yes.

Q. And jammer? A. Yes.

Q. Now, a jammer is a log loader?

A. Yes, machine that you load logs with.

Q. Now, I take it that the Chev truck was a logging truck? . Yes, that's right.

Q. Did you sell those to him on contract or mortgage or how was that?

A. I sold it to him on a verbal agreement.

Q. On just an oral agreement?

A. Just a verbal agreement. There was no contract between us that I can remember.

Q. Then did he pay you then for the machines?

A. He did.

Q. Do you know how much he paid you? [128]

A. I can't remember the exact amount that he paid me because he took over the payments. That wasn't all clear when I sold it to him and he took over the payments and finished paying the payments on that truck in 1948. I can't remember how much he gave me on that truck.

Q. But he took over your equity?

A. Yes.

Q. And when did he complete the payment?

A. I think sometime in '48.

Q. Now, did you furnish him any stumpage?

A. There was a little. I can't quite remember.

(Testimony of William Zunke.)

I think there was a little timber. There was something else too. He got some logs that were ready cut which he paid me back the cutting. I had paid the cutters for cutting these logs. There wasn't any timber.

Q. And he paid you back for what you had already paid out?

A. That's right. That's right.

Q. And do you know how much in logs that was?

A. No, I don't.

Q. What is stumpage; what does the terminology "stumpage" mean?

A. At that time?

Q. Yes, what is "stumpage"?

A. Well, it is timber you buy standing. It is stumpage.

Q. All right, I just want the jury to understand, Mr. Zunke, [129] what you and I are talking about here?

A. Yes, surely.

Q. Do you have any idea how much stumpage you sold or was included in your original deal with Mr. Palermo?

A. I do not, no.

Q. Were you to receive some money back from the stumpage that you sold him?

A. I think I did.

Q. How much would that be, do you know?

A. I don't remember. I don't know.

Q. Mr. Zunke, handing you Plaintiff's Exhibit 12, which is a bank deposit slip from Mr. Palermo to the bank at Stevenson, dated 6/28/50, there is a notation here, "W. A. Zunke 753.46."

(Testimony of William Zunke.)

A. Pardon me, I thought you were talking when I first——

The Court: Speak up, please.

Mr. Bantz: You have got to speak up. I know we are off of that subject.

The Court: We have got to hear you.

Mr. Bantz: I am not interested in what you were whispering about.

The Witness: I am not whispering.

Q. (By Mr. Bantz): That is right, Mr. Zunke, \$753.46? A. Yes, that's right.

Q. Now, you are W. A. Zunke? [130]

A. Yes, I am.

Q. Now, you paid your son a check in that amount, do you remember?

The Court: Son-in-law.

Mr. Bantz: Yes, pardon me, son-in-law.

A. I paid for some logs I got in 1950 but the exact amount of the checks I can't tell you.

Q. Now, referring to Plaintiff's Exhibit 16, which is bank deposit slips with the Security State Bank in the name of Joe Palermo, there is a notation, a number "98-187, W. A. Zunke, 789.37." It is dated September 27, 1950. Now, just one more; and reading from Palermo deposit slip, Exhibit 16, on the deposit slip of 11/16/50, is another notation of a check deposited in your son-in-law's account in the amount of \$1,677.32 with a notation of "W. A. Zunke," That makes three checks in 1950 with your notation on, with your name on there, Mr. Zunke.

(Testimony of William Zunke.)

Do you recall of paying your son-in-law the money in 1950?

A. Yes, sir. I paid him the money.

Q. You don't recall the exact amount?

A. No.

Q. What was the money for?

A. For cut logs in the woods.

Q. For cut logs in the woods? [131]

A. Yes.

Q. Now, did you receive any other money in the years of '50, '51, '52, or '53 from your son-in-law for logs? A. No.

Q. Did you pay him something—I don't mean receive it, pardon me. Did you pay him any?

A. I don't recall paying, no I don't recall any.

Q. You have had some other business transactions with Mr. Palermo? A. Yes, sir.

Q. What kind of business transactions were those?

A. He loaned me some money on two occasions.

Q. When was the first?

A. I don't recall exactly when it was. But he—I think it was in '51 or '52 he loaned me \$2,000.00.

Q. All right, how did he loan you that; in check or cash? A. In check.

Q. Did you repay him the \$2,000.00.

A. Yes, I did.

Q. And how did you repay that to him?

A. I paid him \$500.00 at a time, plus some interest on the first two or three checks.

(Testimony of William Zunke.)

Q. And that \$2,000.00 was paid in full?

A. Yes, sir.

Q. Now, he loaned you some money the second time? [132]

A. Yes, sir.

Q. Now, can you just recall when that was?

A. He loaned me \$3,000.00 I believe it was in '53, spring of '53.

Q. How did you receive the money; in what form did you receive the money?

A. I received it in a check.

Q. Did you repay Mr. Palermo the money?

A. Yes, I did.

Q. Where were those two loans made?

A. Well, I live at Carnation, Washington, and he lived at White Salmon, Washington, and he mailed me the money.

Q. He mailed you the money? A. Yes.

Q. Did he have a promissory note each time or was it an oral agreement?

A. I had a promissory note I gave on the first one and the second one nothing that I know of.

Q. And do you owe Mr. Palermo any money at the present time? A. Yes, I do.

Q. Is any of that money from a loan made during the years 1950 through 1953? A. No, sir.

Q. Have you made any additional loans during 1954 and 1955? A. No, sir. [133]

Q. I mean did you borrow any?

A. No, sir.

Q. Well, Mr. Zunke, I believe you stated that Mr. Palermo worked for you during the years of

Testimony of William Zunke.)

1946 and part of 1947? A. Yes, sir.

Q. Do you recall what his income was or what you paid him as a result of that employment in 1947 and 1946?

A. It run between \$4,500.00 and \$5,500.00 somewhere right in there.

Q. Now, did he work for anybody else during those years? A. Not that I know of.

Q. You would have known of it if he was working for someone else in the logging business, wouldn't you? A. Oh, yes.

Q. Now, during the years preceding that time that he worked for you—I don't mean to the exact dollar—let us take the years of '44, '45 and '46, do you have any idea what his average income was?

A. Well, they were pretty near the same, pretty near the same. They weren't quite as much up in '44 but in '45 as the market picked up he made more money.

Q. Well, in '44 he didn't make much money?

A. Well, he made quite a bit in '44 and '45.

Q. How much was that?

A. I can't tell you exactly but it run pretty close to the [134] '46 months.

Q. In other words, \$4,500.00 or \$5,000.00?

A. Yes, sir, that is right.

Q. That would be his average then for those four years? A. You are right.

Q. Now, in the past ten years have you made any substantial gifts to your daughter Mrs. Palermo?

A. No.

(Testimony of William Zunke.)

Q. Have you made any monetary—given any gifts of money at all to her? A. No.

Q. Or any other property? A. No.

Q. Have you made any gifts to Mr. Palermo in the past ten years? A. No.

Mr. Bantz: You may examine, Mr. Moore.

Cross-Examination

By Mr. Moore:

Q. Mr. Zunke, you said that Mr. Palermo worked for you in 1932?

A. Yeah, about six months or so he worked for me.

Q. Is that when you first became acquainted with him?

A. I became acquainted with him in 1930.

Q. Where was that? [135]

A. In Olympia, Washington.

Q. In 1932 where did he work for you?

A. He worked for me in Okanagon County, Tanassee.

Q. What kind of work was he doing?

A. He cut logs for me in 1932.

Q. And in 1944 and 1947 when he was working for you, where did he do this work?

A. Well, he worked different places, in different counties. He worked in Snohomish County most of the time.

Q. Snohomish County?

A. Yes, at Port Angeles, Washington.

Q. And where else?

(Testimony of William Zunke.)

A. And in Klickitat County.

Mr. Bantz: I can't hear you.

A. In Klickitat County.

Mr. Moore: Will you speak up.

Q. During the years 1944 to 1947, what kind of work was he doing?

A. He drove truck for me.

Q. That was the only kind of work he did?

A. Well, he loaded logs and worked with the logs and anything else, and if I needed any help he gave me a hand. That was the main job driving truck.

Q. In the first part of that period, 1934, 1944 and 1945, approximately what would Mr. Palermo's income have been [136] for a year?

A. I didn't get that.

Q. How much did Joe make driving truck for you during that period?

A. Well, at first we didn't make very much money during those hard times, some years we didn't make very much. I remember one year we didn't hardly make any money. We didn't make any money in 1930—in 1930, but in—not in 1930 but in 1934 at Port Angeles.

Q. You paid your men off with credit slips?

A. Well, we gave them credit slips to go and get groceries.

Q. About when did Joe start making \$4,500.00, when would that have started in about?

A. Well, '44.

(Testimony of William Zunke.)

Q. Well, in other words, from about 1932 to 1944 he didn't make too much money?

A. No, he didn't.

Q. During the period of '44 to '47, did Mr. Palermo have anything to do with the actual operation of the business other than driving truck?

A. No, sir.

Q. Did he have anything to do with the payroll?

A. No, sir.

Q. Or bookkeeping? A. No, sir. [137]

Q. And in '47 when you sold this equipment to Mr. Palermo was it your idea that you were getting out of the logging business at that time?

A. Yes, sir.

Q. Did Mr. Palermo approach you about going into business by himself?

A. I can't remember just how that came about but I got hurt in '46. I got my arm hurt and I couldn't work in '47. Mr. Palermo was working and it was pretty hard for me to work and I wanted to get out, and how it was and the conversation I can't remember.

Mr. Moore: That is all.

Mr. Bantz: You may be excused.

The Court: That is all, Mr. Zunke.

(Witness excused.)

DORIS MORIARTY

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Would you state your name, please?

A. Doris Moriarty.

Q. And Mrs. Moriarty, where do you live?

A. White Salmon.

Q. And how long have you lived at White [138]
Salmon? A. Since '48.

Q. And where are you employed at the present
time?

A. For the Loggers Association at Bingen,
Washington.

Q. For the Loggers Association? A. Yes.

Q. What is the name of that Loggers Associa-
tion? A. Mt. Adams Loggers Association.

Q. What is your position with the Mt. Adams
Loggers Association?

A. I am their bookkeeper.

Q. And are you the office manager?

A. Yes.

Q. Are you the only full-time employee of the
Association?

A. In the office, yes. We have one more worker.

Q. What does your job consist of in that Asso-
ciation?

A. Taking care of the books, contacting buyers
and contacting loggers to dump logs into the river
for use.

(Testimony of Doris Moriarty.)

Q. What is the function of the Mt. Adams Loggers Association?

A. Well, it is a group of sixty-three members who are all loggers and they formed a corporation so that they would have a market for their logs if they wished to sell down river.

Q. Now, do you purchase the logs, then, your Association, or do you just handle them?

A. No, we just handle them for the loggers. [139]

Q. When did you go to work for the Mt. Adams Association? A. November, 1953.

Q. And you have been the bookkeeper ever since then? A. Yes.

Q. How does the Mt. Adams Association get any money as a result of the work you do, do you get paid anything? A. Do I get paid anything?

Q. No, does the Association get paid for the work you do?

A. The Association gets paid for booming and rafting the logs.

Q. How much is that?

A. They collect \$1.75 for all logs that are rafted at the boom.

Q. Is Mr. Palermo a member of the Mt. Adams Loggers Association? A. Yes, sir.

Q. Do you know Mr. Palermo?

A. Yes, sir.

Q. Is he in the court room? A. Yes, sir.

Q. Where is he sitting?

A. Behind Mr. Moore.

(Testimony of Doris Moriarty.)

Q. Thank you. Has Mr. Palermo been an officer of the Mt. Adams Loggers Association?

A. No, sir. [140]

Q. Have you had any business with Mr. Palermo in connection with the Mt. Adams Loggers Association?

A. He dumped logs in the dump and we have paid him for the logs.

Q. You have paid him for the logs that he has dumped there? A. Yes.

Q. How is that money paid, Mrs. Moriarty, in what form? A. Check.

Q. Who signs your checks?

A. I do and one of the officers.

Q. Now, do you know when the Mt. Adams Loggers Association was formed?

A. In 1950 and then they reorganized again in 1954.

Q. I believe you were given a subpoena duces tecum to bring some records with you, is that correct? A. Yes.

Q. And did you bring those? A. Yes.

Q. You brought those records with you?

A. Yes.

The Clerk: Plaintiff's 35 and 36.

Mr. Bantz: Could we have you just clip those in the end just inside for the time being until we examine them, Mr. Taylor.

The Clerk: Yes. 37 and Plaintiff's 38. [141]

Q. (By Mr. Bantz): The records you just

(Testimony of Doris Moriarty.)

handed to me, Mrs. Moriarty, are they in your custody? A. Yes.

Q. And you keep the custody of these records as well as others of the Association, do you?

A. Yes.

Q. Now, handing you Plaintiff's 35 for Identification, please examine that. Is that part of the records you brought with you? A. Yes, sir.

Q. And do you recognize it? A. Yes, sir.

Q. Now, what are those?

A. Those are checks in payment of the logs at the dump.

Q. And who are they to?

A. Joe Palermo.

Q. Now, I notice that the signature on here is not your signature, is that correct?

A. Yes, sir.

Q. Do you know whose signature it is?

A. Yes, sir.

Q. And whose? A. Mr. Twidwell.

Q. Mr. Twidwell?

A. Yes, he was President of the Association at that time and [142] Atha Twidwell was the book-keeper.

Q. These are part of the records of the Loggers Association? A. Yes.

Q. And who are those checks made payable to?

A. Joe Palermo.

Q. I notice now in your Plaintiff's 35 they are for the year 1950? A. Yes, sir.

Q. Will you just go through the business of

(Testimony of Doris Moriarty.)

examining each check and be sure who they are to and if you recognize the signature?

A. Yes, they are all to Joe Palermo and I recognize all the signatures.

Q. And what would these checks be for?

A. Payment of logs.

Mr. Bantz: I will offer Plaintiff's 35 in evidence.

Mr. Moore: No objection.

The Court: It will be admitted.

(Whereupon, said group of checks was admitted in evidence as Plaintiff's Exhibit No. 35.)

Q. Mrs. Moriarty, I will just read from Plaintiff's Exhibit 35 the check amounts. There is date of October 18, 1950, and the amount of \$218.00. Then there is \$186.39 on a [143] check dated October 24, 1950, and then one in the amount of \$884.00, dated November 14th, 1950. A. Yes.

Q. And then one in the amount of \$194.60, dated November 20, 1950, and one in the amount of \$416.44, dated December 5th, 1950, and one dated December 26, 1950, in the amount of \$428.56.

A. That is correct.

Q. Now, do you have any other checks for the year 1950 in the Mt. Adams Loggers Association that were made to Joe Palermo? A. No.

Q. Did you check your records? A. Yes.

Q. Now, handing you Plaintiff's 36 for Identification. Please examine that. Is that one group of checks that you brought with you?

(Testimony of Doris Moriarty.)

A. Yes. Yes.

Q. And they are for what year? A. '51.

Q. And they are payable to whom?

A. Joe Palermo.

Q. Now, please check each signature so that you can testify as to the signature on each check.

A. Yes, they were all issued by the Loggers Association. [144]

Q. And they are all signed by the same people?

A. Yes, the Twidwells.

Q. The Twidwells? A. Yes.

Q. And these are from your official records?

A. Yes.

Q. And did you check to see if there were any other checks for the year 1951? A. Yes.

Q. Did you find any others? A. No.

Q. And what would these checks be for?

A. Payment of logs.

Q. Payment of logs handled through your Loggers Association? A. Yes.

Mr. Bantz: I will offer Plaintiff's 36.

Mr. Moore: No objection.

The Court: It will be admitted.

(Whereupon, said group of checks was admitted in evidence as Plaintiff's Exhibit No. 36.)

Mr. Bantz: Your Honor, if I may I just want to run through these to the jury on the dates and amounts.

The Court: That is all right. [145]

Testimony of Doris Moriarty.)

Mr. Bantz: I will save a little bit of time here.

The Court: All right.

Mr. Bantz: Check in the amount of \$224.22; May 16, 1951, in the amount of \$542.75; May 29, 1951, \$789.74; June 5th, 1951, a check in the amount of \$470.42; June 12th, 1951, a check in the amount of \$888.58; June 19, 1951, a check in the amount of \$172.24; June 26, 1951, a check in the amount of \$263.21; July 12, 1951, a check in the amount of \$460.06; July 19, 1951, check in the amount of \$350.84; July 7, 1951, check in the amount of \$1,006.42; July 23, 1951, check in the amount of \$313.16, and September, 1951, a check in the amount of \$127.09.

Q. Handing you Plaintiff's Exhibit 37 for identification, Mrs. Moriarty, would you please examine each check again in that exhibit?

A. Yes, those are all checks from the Association.

Q. And they are all signed by the same people?

A. No. They are signed by Clyde Winfee, he was the President of the Association that year.

Q. What year were those checks?

A. 1952.

Q. Did you look in your records to see if there were any additional checks? A. Yes.

Q. Did you find any? [146] A. No.

Q. What were these checks for?

A. Payment of logs.

Q. Through your association? A. Yes.

(Testimony of Doris Moriarty.)

Mr. Bantz: I will offer Plaintiff's 37, your Honor.

Mr. Moore: No objection.

The Court: Admitted.

(Whereupon, group of checks of year 1952 admitted in evidence as Plaintiff's Exhibit No. 37.)

Mr. Bantz: Your Honor, again, if I may read them.

The Court: Yes, you may read the amounts.

Mr. Bantz: Rather than ask her, if I may read them. I am just going to read the amounts. They start with April 22, 1952, and end November 12, 1952, and I will just read the amounts. \$284.78, \$441.97, \$613.17, \$267.48, \$148.74, \$160.89, \$91.07, \$120.00, \$160.31, \$233.16, \$328.72, \$576.27, \$125.15, and \$135.24.

Q. Now, Mrs. Moriarty, handing you Plaintiff's Exhibit 38, for Identification, would you please examine that exhibit. First what is that exhibit?

A. They are checks in payment of logs.

Q. And who are they to? [147]

A. Joe Palermo.

Q. Would you please examine each of those checks and be sure you recognize them?

A. This is a list of them here.

Q. You have got to speak up.

A. This is a list of them here and these are to two people here, Joe Palermo and James Willman.

Q. Now, in Plaintiff's 38 you are stating that

(Testimony of Doris Moriarty.)

There are six checks that are made jointly to James Willman and Joe Palermo? A. Yes, sir.

Q. What were those six checks for here?

A. Well, it was my understanding——

Q. Well, do you know what they were for? I don't want your understanding.

A. They were in payment of logs.

Q. They were in payment of logs?

A. Yes.

Q. Why was there two names on the checks?

A. Mr. Willman was using a piece of the equipment of Mr. Palermo and he wanted to get paid for the use of the equipment and so Mr. Willman put the logs in their joint names.

Q. Who was using whose piece of equipment?

A. Mr. Willman was using Mr. Palermo's piece of equipment. [148] They were Mr. Willman's logs.

Q. And the checks were made jointly to the two individuals? A. Yes, sir.

Q. All of the checks in Plaintiff's 38 for Identification were for Mr. Palermo? A. Yes.

Q. And these are the records you brought up here? A. Yes.

Q. And these are for the year 1953?

A. Yes.

Q. And did you find any other checks made payable to Mr. Palermo? A. No, sir.

Mr. Bantz: I will offer in evidence Plaintiff's 38.

Mr. Moore: No objection.

The Court: It will be admitted.

(Testimony of Doris Moriarty.)

(Whereupon, said checks of the year 1953 admitted in evidence as Plaintiff's Exhibit No. 38.)

Mr. Bantz: Your Honor, I would like to read, again, the amount of these checks, if I may. Starting with the check dated June 22nd, 1953, through December 28, 1953, from Plaintiff's Exhibit 38, checks in the following amounts: \$273.51, \$1,241.60, \$957.76, \$1,428.37, \$1,620.24, \$906.86, [149] \$1,239.76, \$1,058.12, \$132.46, \$136.53, \$121.84, \$409.88, \$1,087.43, \$100.78. A check to Joe Palermo and James Willman \$98.61. Another one to the same individuals, \$693.35. To Palermo, \$788.70, \$1,167.88, \$447.66, \$167.76. Another one to Willman and Palermo \$801.60, and to Palermo, \$243.80. To Willman and Palermo, \$177.71, \$1,611.13, \$91.60, \$790.32, \$113.30, made to Willman and Palermo, \$262.87, \$326.75 and \$526.57 and \$1,237.06.

Q. Mrs. Moriarty, was Mr. Palermo a member of your organization during the years of 1950, 1951, 1952 and 1953?

A. I believe Joe became a member in 1952.

Q. And your records show that, do they?

A. In other words, he was not a member in 1950 and 1951? A. No.

Mr. Bantz: You may examine, Mr. Moore.

(Testimony of Doris Moriarty.)

Cross-Examination

By Mr. Moore:

Q. Can any logger run logs through the association without being a member?

A. At the present time they can.

Q. In 1950 and 1951 could they?

A. Yes, they could but there was an extra fee.

Q. The money then that was given to Mr. Palermo in '50 and '51 would have been after the logs which belonged to him had been sold and the cost of booming and rafting, [150] the normal and extra fee had been taken out? A. Yes.

Q. And 1952 and 1953 it would have been the same thing except without that extra fee?

A. Yes, sir.

Q. How are the checks from the Association normally delivered to the loggers; by mail?

A. By mail unless they come by the office and pick them up.

Mr. Moore: I think that is all.

The Court: Any other questions?

Redirect Examination

By Mr. Bantz:

Q. Did Mr. Palermo ever come by and pick up any of his checks, to your knowledge?

A. I usually mailed Mr. Palermo's.

Q. You usually mailed them to him?

A. Yes, sir.

(Testimony of Doris Moriarty.)

Q. Now, you state that all of the expenses incurred through the association are deducted prior to the time you send the checks to him?

A. Yes.

Mr. Bantz: Your Honor, I stop there with her. I want to change to another job that she had at a previous time. It was a different job.

The Court: All right. [151]

Q. Mrs. Moriarty, where were you employed in 1951 up until the time you went to work for the Mt. Adams Association?

A. The first part of 1951 I worked at the bank but in March, 1951, I worked for McCormick Lumber Company.

Q. And how long did you work for McCormick Lumber Company?

A. Until November 1st, 1953.

Q. What was your position with McCormick Lumber Company?

A. I was the bookkeeper.

Q. And where was McCormick Lumber Company located?

A. Bingen, Washington.

Q. And was it also a general lumber operation?

A. Yes.

Q. Is it still in business. A. No.

Q. When did the McCormick Lumber Company go out of business?

A. The corporation that I worked for stopped operation November 1st, 1953.

Q. Did you keep the books and records during

(Testimony of Doris Moriarty.)

he time that you were there? A. Yes, sir.

Mr. Bantz: Will you be so good as to clip them
n there; I want those two checks placed together
for identification, Mr. Taylor.

The Clerk: As one?

Mr. Bantz: Yes, as one. [152]

The Clerk: Plaintiff's 39 and Plaintiff's 40.

Q. Mrs. Moriarty, do you at this time know
where the records of McCormick Lumber Company
are? A. No, sir.

Q. Handing you Plaintiff's Exhibit 39 for
Identification, would you just look at that and see
if you recognize what it is?

A. It is one of the checks that was issued by
McCormick Lumber Company to Joe Palermo for
\$1,000.00.

Q. And what was the date?

A. December 21st, 1953.

Q. There is another check on there; would you
tell the Court what that is?

A. December 5, 1953, for \$1,000.00 made payable
to Joe Palermo and Mr. McCormick signed it.

Q. And do you recognize the signature on that
check? A. Yes.

Q. And is the exhibit and the type of check used
by McCormick Lumber Company? A. Yes.

Q. Now, would you examine Plaintiff's 40 for
Identification. Do you recognize what that is?

A. Yes.

Q. Would you state what it is?

A. It is the ledger sheets out of our accounts

(Testimony of Doris Moriarty.)

payable [153] ledger for logs of McCormick Lumber Company.

Q. Well, it isn't the original?

A. No, it is a photostatic copy.

Q. It is a photostatic copy? A. Yes.

Q. Now, do you find your writing anywhere on there? A. Yes.

Q. Where does your writing start?

A. March 27th, 1953.

Q. All right, then, is the balance of the exhibit in your handwriting? A. Yes.

Q. And would you state again what this is now, the whole thing, what do you call it?

A. It is the ledger sheets from the accounts payable ledger for logs.

Q. And who is it to?

A. To Joe Palermo.

Q. And what is the accounts payable; what do you mean by the accounts payable?

A. If McCormick buys logs from Joe Palermo or other loggers and they set up a ledger to show record of all loggers' logs received and date of payment.

Q. And this would show what had been paid to Joe Palermo during the dates represented on there, is that right? [154] A. Yes, sir.

Q. Who was President of McCormick Lumber Company. A. Mr. McCormick.

Q. Do you know where Mr. McCormick is now?

A. No, sir.

Mr. Moore: I have no objection to 29.

Testimony of Doris Moriarty.)

Mr. Bantz: 39.

The Court: It is 39.

Mr. Moore: I mean 39.

Mr. Bantz: We offer it in evidence.

The Court: It will be admitted.

(Whereupon, said document was admitted in evidence as Plaintiff's Exhibit No. 39.)

Mr. Moore: No objection to 40.

The Court: Forty will be admitted.

(Whereupon, said ledger sheets were admitted in evidence as Plaintiff's Exhibit No. 40.)

Q. Mrs. Moriarty, I am not sure I asked you: For the accounts payable what were these payable to Mr. Palermo for; what was the money payable to him for? A. For logs. [155]

Q. For logs? A. Yes.

Q. Now, would you examine Plaintiff's Exhibit 40 and tell me if Mr. Palermo had any money coming at the end of the time that the books show on there?

A. As of September 18th, 1953, he had a balance due him of \$6,275.74.

Q. Now, in Plaintiff's Exhibit 39 the checks are dated December 21, 1953, and December 5th, 1953. Were those payable on the \$6,000.00 that was due in September then? A. Yes.

Q. Now, can you tell then what is the balance due as far as these records show in December 21,

(Testimony of Doris Moriarty.)

1953? A. That would be \$4,275.74.

Q. And what were the two checks payable for then? A. Logs.

Q. Logs? A. Yes.

Mr. Bantz: I have no further examination, Mr. Moore.

Mr. Moore: Do you know if Mr. Palermo ever received that \$4,275.74? A. No, sir; I don't.

Mr. Moore: That is all.

Mr. Bantz: That is all.

The Court: That is all then. The Court will take a [156] ten-minute recess.

(Whereupon, after the usual morning recess, the following proceedings occurred:)

The Court: You may proceed.

Mr. Bantz: Mrs. Dorothy Legler. Your Honor, before she comes I want to make a record here on—would you hand me Plaintiff's Exhibit 39-40—your Honor, in Plaintiff's Exhibit 38 there are six checks in which the names of James Willman and Joe Palermo appear. I introduced the same for the purpose that they were part of the records of Mt. Adams Association. However, the six checks that are in here have nothing to do with this particular case. They are not included in the summaries or in the income under this particular organization, and I am wondering if you could——

The Court: Those were the checks that were made jointly with another individual?

Mr. Bantz: Yes, they were made jointly, and I

Testimony of Doris Moriarty.)

would like to have it understood that in our summary they are not being included in it and the jury is instructed to disregard it, and I would like to have Mr. Taylor take the six out if that is agreeable.

The Court: I think we have enough documents that it would confuse the jury and I suggest, if counsel have no objection, that they be withdrawn to another number.

Mr. Bantz: That is agreeable. [157].

The Court: 40-a, 38-a. Well, you may withdraw them.

Mr. Bantz: All right, with your permission we will withdraw those checks.

The Court: Is that 39?

Mr. Bantz: No, 38, your Honor.

The Court: All right, they will be taken out of 38, withdrawn from 38.

DOROTHY LEGLER

called and sworn as a witness on behalf of the Government was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Will you state your name, please?

A. Dorothy Legler.

Q. Mrs. Legler, you are the wife of Wally Legler who was on the stand previously?

A. That is right.

Q. Where do you live, Mrs. Legler?

(Testimony of Dorothy Legler.)

A. At White Salmon.

Q. And how long have you lived there?

A. I have lived there all of my life.

Q. And where are you employed now, Mrs. Legler?

A. S. D. S.

Q. Will you explain what that is, Mrs. Legler?

A. Stevenson, Dobanspeck & Stevenson. It is a partnership. [158]

Q. What kind of operation is that?

A. That is a sawmill operation.

Q. Where is that located?

A. Stevenson, Dobanspeck & Stevenson is located at Bingen, Washington.

Q. Bingen, Washington?

A. Yes.

Q. How long have you been employed there?

A. Since February, 1946.

Q. And what are your duties?

A. Office manager and bookkeeper.

Q. And have you been in that capacity all that time?

A. Yes.

Q. And are you familiar with the books and records of S. D. S. Lumber Company?

A. Yes, sir.

Q. Are they under your supervision?

A. Yes.

Q. And were you issued a subpoena to produce some records in Court today?

A. Yes, I was.

Q. And did you bring them with you?

A. Yes, I did.

Mr. Bantz: Let me have them, please. Will you

(Testimony of Dorothy Legler.)

clip them together and make one exhibit please, Mr. Taylor. [159]

The Clerk: Plaintiff's 41. Plaintiff's 42, 43, 44, and Plaintiff's 45.

Q. Mrs. Legler, handing you Plaintiff's 41, that is part of the records you brought with you today?

A. Yes, it is.

Q. And they have been in the custody of the S. D. S. Lumber Company in your office, is that correct?

A. That's right.

Q. Now, what are those purported to be there?

A. Checks, cancelled checks and purchase invoice statements for logs issued to Joe Palermo in December, 1947—November and December, 1947.

Q. Now, the cancelled checks and the other papers are supporting documents?

A. Yes, purchase invoices.

Q. Purchase invoices? A. Yes.

Q. And what information appears there?

A. The period in which the logs were purchased and the log ticket information and amount of footage and extension of the check.

Q. The extension is the amount that the check would be? A. Yes, that is right.

Q. For what year? A. '47. [160]

Q. Now, handing you Plaintiff's 42, would you examine that exhibit. Do you recognize that?

A. Yes.

Q. And is that part of your records?

A. That is.

Q. And what is that?

(Testimony of Dorothy Legler.)

A. It is the cancelled check and purchase invoice for logs purchased in July of 1948 and the check payable to Joe Palermo.

Q. Now, handing you Plaintiff's 43, would you please examine that. Have you seen that before?

A. Yes, I have.

Q. Was that part of your official records?

A. Yes, it is.

Q. And it is part of the records you brought with you today? A. Yes.

Q. And what is that?

A. It is the cancelled check and purchase invoice for December of 1949, check payable to Joe Palermo and it is for logs.

Q. Yes. And in the other two exhibits, Plaintiff's 41 and 42, that I handed you, what were those checks payable for?

A. For the purchase of logs.

Q. Now, handing you Plaintiff's 44, would you please examine that? [161] A. Yes.

Q. Is your testimony to this check the same as it was to the previous exhibits?

A. It is. It is.

Q. And who is that made payable to?

A. To Joe Palermo.

Q. What is the date, please?

A. August 5, 1950.

Q. And what is that payable to Joe Palermo for? A. Logs.

Q. Handing you Plaintiff's 45 for Identification, will you please examine that exhibit. Have you seen it before? A. Yes, I have.

(Testimony of Dorothy Legler.)

Q. And is your testimony to that check the same as it is to the others? A. Yes.

Q. And you brought it today? A. Yes.

Q. And who is it made payable to?

A. To Joe Palermo.

Q. And what is the date on it?

A. April 25, 1952.

Q. And what would that check be payable for?

A. For logs purchased.

Q. Do you know of any other business that S. D. S. had with [162] Joe Palermo during the years 1950 through 1953? A. No.

Q. Did you search your records, Mrs. Legler, for any other slips or invoices or checks that you had in the file showing any payment or disbursement that you had to Joe Palermo?

A. Yes, I did, and I found nothing.

Q. And you found nothing, is that right?

A. Yes.

Mr. Bantz: I am going to offer Plaintiff's 44 and 45 into evidence, your Honor.

Mr. Moore: No objection.

The Court: They will be admitted.

(Whereupon, said checks, etc., were admitted in evidence as Plaintiff's Exhibits Nos. 44 and 45.)

Mr. Bantz: And I will not at this time offer Exhibits 41, 42 or 43.

Q. Has the S. D. S. Lumber Company done any business with Mr. Palermo since 1953?

(Testimony of Dorothy Legler.)

A. In 1954 and that is——

Q. One check?

A. One check and that is all.

Q. And you do have that with you? [163]

A. Yes, I do.

Q. And that consists of all of the records that you have concerning Mr. Palermo?

A. That's right.

Mr. Bantz: You may examine.

Cross-Examination

By Mr. Moore:

Q. Were the checks issued to Mr. Palermo mailed to him or delivered personally?

A. Well, it is my remembrance that either Mr. Palermo or Mrs. Palermo would pick them up.

Mr. Moore: That is all.

Mr. Bantz: That is all.

(Witness excused.)

Mr. Bantz: Mr. Ackley.

CHARLES ACKLEY

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Will you state your name please?

A. Charles Ackley.

Q. And where do you live, Mr. Ackley?

(Testimony of Charles Ackley.)

A. Bingen. [164]

Q. Bingen, Washington? A. Yes, sir.

Q. And how long have you been a resident of Bingen? A. Oh, off and on all of my life.

Q. And what business are you in at the present time, Mr. Ackley?

A. I am just hauling logs with a truck of my own.

Q. Your own truck? A. Yes, sir.

Q. And what business have you been following in the past ten years?

A. Sawmilling and logging.

Q. And where were you in the sawmill business? A. In and around Klickitat County.

Q. And about the logging business, where were you in the logging business?

A. In the same district.

Q. In other words, the operations are in that locality? A. Yes, sir.

Q. Do you know Mr. Joe Palermo?

A. Yes, sir.

Q. Have you had business with him in the past? A. Yes, sir.

Q. In what years did you have some business with Mr. Palermo? A. '49, '50, '51, '52. [165]

Q. And what kind of business was that?

A. I bought logs from him.

Q. You bought logs from him? A. Yes.

Q. Did you do any other business with Mr. Palermo? A. No.

Q. All right. Is Mr. Palermo in the courtroom?

(Testimony of Charles Ackley.)

A. Yes, sir.

Q. The same one that you dealt with?

A. Yes, sir.

Q. You know him personally, I take it?

A. Yes, sir.

Q. Now, were you given a subpoena to produce some records in court today? A. Yes, sir.

Q. And did you bring those records with you?

A. I have them here.

Mr. Bantz: May I have them, please. Make one exhibit, please, Mr. Taylor.

The Clerk: Plaintiff's 46, 47, 48, 49.

Q. Mr. Ackley, handing you Plaintiff's 46 for Identification, will you please examine those checks. What are those now?

A. Cancelled checks for logs.

Q. What year are they for?

A. 1949. [166]

Q. And who are they made payable to?

A. Joe Palermo.

Q. And what were the checks to Mr. Palermo for? A. For logs delivered.

Q. Now, handing you Plaintiff's 47 for Identification, would you please examine each check to see that they are signed by you and that they are the proper year. What year are these checks for?

A. 1950.

Q. And who are they payable to?

A. Joe Palermo.

Q. And they are all signed by you?

A. Yes, sir.

(Testimony of Charles Ackley.)

Q. And what are they for?

A. For the purchase of logs delivered to me.

Mr. Bantz. Mr. Moore, do you want me to wait so that you can look at these before we proceed?

Mr. Moore: No, go ahead, I will keep one eye on you.

Mr. Bantz: All right.

Q. Handing you Plaintiff's 48 for Identification, will you examine those and tell me what they are and if you signed them. What are these?

A. Those are cancelled checks issued to Joe Palermo.

Q. For what year?

A. For 1951, for purchase of logs. [167]

Q. For purchase of logs? A. Yes.

Q. Handing you Plaintiff's 49, would you please examine that document there?

A. They must have used chewing gum here——

Q. Now, what is Plaintiff's 49 for Identification, for what is that?

A. Logs purchased from Joe Palermo in 1952.

Q. They are cancelled checks?

A. Yes, sir.

Q. And who are they made payable to?

A. Joe Palermo.

Q. And for the year 1952? A. 1952.

Q. Are they signed by you? A. Yes, sir.

Mr. Bantz: Will you mark that, please?

The Court: Is that 50?

The Clerk: Plaintiff's 50.

Q. Mr. Ackley, handing you Plaintiff's 50 for

(Testimony of Charles Ackley.)

Identification, would you please examine that and state, if you know, what it is?

A. Well, this is my records for purchases of material that was used in operation of the mill, that is the logs and other—— [168]

Q. What years does that cover?

A. '49, '50, '51, '52.

Q. And it shows the people that you purchased logs from during those years? A. Yes, sir.

Q. Does that include the defendant here, Mr. Palermo? A. Yes, it does.

Q. The payments that are shown on Plaintiff's 50 for Identification would be for what reason?

A. I didn't understand.

Q. Why would you be paying the money to any of the individuals on here, for what reason were you paying them, what were you buying from them?

A. Well, some of those records show gasoline and other things but other records show logs purchased from Joe Palermo.

Q. Are there any other things on here for Joe Palermo other than that?

A. There are other things indicated on here.

Q. What do they include?

A. General run of the business.

The Court: I am not sure that the witness understood.

Q. What do they include for Joe Palermo?

A. Oh, no, nothing other than logs for Mr. Palermo, just logs for Mr. Palermo. [169]

(Testimony of Charles Ackley.)

Mr. Bantz: I will offer in evidence 47, 48 and 49.

The Court: 47, 48 and 49?

Mr. Bantz: Yes. I am not offering Plaintiff's 50 or 46, either one.

The Court: Admitted.

(Whereupon, said documents were admitted in evidence as Plaintiff's Exhibits Nos. 47, 48 and 49.)

Mr. Bantz: Your Honor, I would again like permission to go over some checks here and I will go as fast as I can if I may.

The Court: All right.

Mr. Bantz: I am reading from Plaintiff's Exhibit 47 which is a group of checks signed by Mr. Ackley, made payable to Joe Palermo. The first checks start with April 20, 1950, and the last check in the exhibit is December 5, 1950, in the following amounts: \$1,593.71, \$2,736.92, \$3,209.36, \$2,563.96, \$3,475.14, \$4,273.50, \$2,800.80, \$2,612.10, \$2,827.50, \$3,363.30, \$2,832.96, \$2,359.74, \$594.00, \$516.40.

Reading from Plaintiff's Exhibit 48, which is a group of checks signed by Mr. Ackley made payable to Mr. Palermo, the first check dated April 20, 1951, and the last check December 20, 1951, in the following amounts: \$2,875.58, \$4,151.12, \$3,750.40, \$3,244.82, \$2,250.98, \$5,053.97, \$4,512.32, \$4,841.35, \$3,922.56, \$4,948.68, \$1,281.09, \$3,130.12, \$2,241.86, \$4,387.82. [170]

Reading from Plaintiff's Exhibit 49, a group of checks signed by Mr. Ackley, made payable to Joe

(Testimony of Charles Ackley.)

Palermo, the first check dated April 19, '52, the last check dated September 29, 1952, in the following amounts: \$2,709.88, \$3,755.50, \$6,022.12, \$5,543.09, \$4,078.32, \$5,041.34, \$2,557.91, \$4,883.92, \$4,436.92, \$3,668.04, \$1,799.64.

Q. Mr. Ackley, did you check your records to see if you had any additional checks that were made payable to Mr. Palermo during the years of 1950 through 1953? A. I have.

Q. And did you find any additional checks?

A. I did not.

Q. I take it, then, that that is all of your business transactions with Mr. Palermo?

A. That's right.

Mr. Bantz: You may examine.

Cross-Examination

By Mr. Moore:

Q. Mr. Ackley, on Plaintiff's Exhibit for Identification 50 there are some red checks there right by the numbers in here. Do you know if that was done by someone working for you?

A. No, that was done by me in fishing out the checks I was asked to. [171]

Q. Oh, I see, you were just checking off what you had found and what you had not found?

A. Yes, sir.

Q. As I understand it, you had some tough luck in '51, '52 and '53 in your milling operation?

A. Yes, that's right.

Testimony of Charles Ackley.)

Q. What happened?

A. The fire destroyed the mill.

Q. And put you out of business?

A. That's right.

Q. And at that time Mr. Palermo had an account owing from you to him for logs, is that right?

A. That is right.

Q. And that account still stands?

A. That is right.

Q. In other words, he still has some money coming from you? A. That's right.

Q. And you haven't been able to pay him?

A. That's right.

Q. Has there been any trouble in business dealings with you and Mr. Palermo?

A. Not to my knowledge.

Q. As far as you know he has always done all right? A. As far as I know. [172]

Q. Was there anything that you ran into in your business dealings with him which wasn't fair on his part?

Mr. Bantz: Your Honor, I would object as being beyond the direct examination. It is going into character references. He is entitled to put him on the stand for that.

The Court: Yes, I think so, yes.

Mr. Moore: I think that is all.

The Court: Any other questions?

Mr. Bantz: No, no questions.

The Court: That is all then.

(Witness excused.)

Mr. Bantz: Mr. Sprague, please.

THEODORE SPRAGUE

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Would you state your name, please?

A. Theodore Sprague.

Q. And where do you live, Mr. Sprague?

A. White Salmon, Washington.

Q. And how long have you lived there?

A. Since 1945.

Q. And what business are you engaged in? [173]

A. Sawmilling.

Q. And how long have you been in the sawmill business?

A. Since 1953.

Q. And were you in a partnership at one time?

A. Yes, with Mr. Seaton.

Q. And what was that called?

A. Seaton and Sprague.

Q. Are you in business still with Mr. Seaton?

A. No, he is retired.

Q. He is retired. And you run your own mill now?

A. That is right.

Q. And do you know Mr. Joe Palermo?

A. Yes, sir.

Q. Is he in the courtroom?

A. Yes, sir.

Q. Sitting—

A. Right by you.

Q. Have you done some business in the past in—

(Testimony of Theodore Sprague.)

dividually or through a partnership with Mr. Palermo? A. Yes.

Q. And when was that? A. Since 1953.

Q. Was that individually or through Seaton and Sprague? A. Seaton and Sprague in 1953.

Q. Now, you were issued a subpoena to produce certain checks [174] and records in connection with this case, is that right?

A. Yes, that is right.

Q. And did you bring them with you?

A. That's right.

The Clerk: Plaintiff's 51.

Q. Mr. Sprague, would you please examine Plaintiff's Identification No. 51 and tell me what they are and if that is in your custody?

A. These are cancelled checks made out to Joe Palermo.

Q. For what year? A. For the year 1953.

Q. And who were they signed by?

A. By myself and one check was signed by Mr. Seaton, my partner.

Q. And you recognize his signature?

A. Yes, I do.

Q. Part of the business of Seaton and Sprague?

A. Right.

Q. And what were these cancelled checks paid for? A. Logs.

Q. To Mr. Palermo? A. Yes, that's right.

Q. In the use of your mill?

A. That's right.

(Testimony of Theodore Sprague.)

Mr. Bantz: I will offer in evidence Plaintiff's 51. [175]

Mr. Moore: No objection.

The Court: Admitted.

(Whereupon said group of checks was admitted in evidence as Plaintiff's Exhibit No. 51.)

Mr. Bantz: Your Honor, I would like to take a moment again, there is just five or six, a very few of these, and read them to the jury.

The Court: All right.

Mr. Bantz: Excuse me, is that all right?

The Court: Yes, I said all right.

Mr. Bantz: Plaintiff's Exhibit 51, the first check being in the amount of—being dated 8/22/53, and the last check dated November 10, 1953, the first check in the amount of \$7,282.81, the second check in the amount of \$3,837.45. The next check in the amount of \$5,063.99, the next in the amount of \$6,806.12, and \$4,836.55, and \$4,119.65.

Q. Mr. Sprague, did you have any other business in the year 1953 with Mr. Palermo? A. No.

Q. And have you paid him any other monies, other than Plaintiff's Exhibit 51? A. No.

Q. Did you have any business prior to 1953? [176]

A. No.

Mr. Bantz: You may examine.

Mr. Moore: No questions.

The Court: That will be all, Mr. Sprague.

(Witness excused.)

Mr. Bantz: Mr. Bolter.

A. M. BOLTER

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Will you state your name, please?

A. A. M. Bolter.

Q. And, Mr. Bolter, where do you reside?

A. At Bingen, Washington.

Q. And what business are you engaged in?

A. In the lumber business.

Q. Lumber business? A. Yes, milling.

Q. In the mill business? A. Yes.

Q. Now, are you familiar with a man who just passed away by the name of Landgraf?

A. Yes, he was my partner in the business. [177]

Q. And when did Mr. Landgraf pass away?

A. A week ago last Friday, the 12th.

Q. Of your own knowledge do you know whether I had asked him to come to this trial?

A. Yes, I do. Yes, I do.

Q. And are you familiar with the records and books concerning the operation between you and Mr. Landgraf? A. Yes, sir.

Q. Did you office together or near each other?

A. Oh, yes, we officed together.

Q. In what city? A. In Bingen.

Q. And now, did you receive a subpoena in which

(Testimony of A. M. Bolter.)

you were to bring certain papers and records with you? A. Yes, sir.

Q. And did you bring them with you?

A. Yes, sir.

Q. And may I have them, please. Would you tell me, do those two articles go together?

A. Yes, sir.

Q. And do these two checks go with this paper?

A. Yes.

Q. Is that a separate item now? A. Yes.

Q. That is a separate item? [178]

A. Yes, it is.

Mr. Bantz: Would you separate, please, the yellow sheet from the other two and make each one an exhibit?

The Clerk: Plaintiff's 52, Plaintiff's 53 and 54.

Q. Mr. Bolter, handing you Plaintiff's 52, 53, and 54, would you examine those, please?

A. Yes.

Q. Have you seen those before? A. Yes.

Q. And what is the Plaintiff's 52?

A. It is for 1952.

Q. Yes?

A. A check for Mr. Joe Palermo for "cat" rental.

Q. Will you speak up?

A. A check for "cat" rental for 1952.

Q. I notice this signature on here is not your signature?

A. Well, this first check is made by Ray Landgraf. He had rented the "cat" along and then after

(Testimony of A. M. Bolter.)

this check he and I as a partnership took over the "cat" and rented it, and here is the other check.

Q. Do you recognize the signature of Mr. Landgraf?
A. Yes, sir.

Q. Did you discuss this matter with him personally before that took place?

A. Yes. Yes, because he took care of it in the payment of [179] the co-partnership.

Q. Now, this is dated May 22, 1952?

A. Yes, sir.

Q. Now, handing you Plaintiff's 53, this is part of the records that you brought with you?

A. Yes, sir.

Q. What is that exhibit?

A. That is for the "cat" rental for the year 1952.

Q. And there are two cancelled checks?

A. Yes, sir.

Q. And some supporting documents?

A. Yes,

Q. And these are not signed by you again, is that right?

A. No, he kept the books and signed all checks. I could co-sign checks.

Q. You recognize the signature on both checks?

A. Yes. Oh, yes.

Q. And you know personally what they are for?

A. Yes.

Q. Will you please examine Plaintiff's 54?

A. Yes.

Q. What is that?

(Testimony of A. M. Bolter.)

A. Well, that is our notation of the amount of rent that was due on the "cat."

Q. And that is for—— [180] A. For rent.

Q. For rent? A. Yes, for rent.

Q. And do you know whether Plaintiff's 54 is part of one of the other exhibits?

A. Well, I wouldn't be too sure about that.

Q. But it is part of your records?

A. Yes, absolutely.

Q. And all of these checks are made payable to who? A. Palermo.

Q. And do you know Mr. Palermo?

A. Oh, yes.

Q. And is he here in the courtroom?

A. Yes, sir.

Mr. Bantz: Your Honor, may I withdraw Plaintiff's 54 and attach the same to Plaintiff's—what is the one I have?

Mr. Moore: 53.

Mr. Bantz: May I attach it to Plaintiff's 53 as the testimony shows that they should be together.

The Court: All right.

Mr. Bantz: I will offer Plaintiff's Exhibits 52 and 53 into evidence, your Honor.

Mr. Velikanje: Are you going to have a new No. 54?

The Court: I think that the record will show that 54 [181] has been withdrawn and attached to 53, and so No. 54 will be open for the next exhibit that comes along.

Mr. Velikanje: Yes.

(Testimony of A. M. Bolter.)

Mr. Moore: May I inquire?

The Court: Yes.

Q. (By Mr. Moore): On this Exhibit 53 for identification, the yellow slip in the back dated August 16, 1952, there is "Joe Palermo, White Salmon, 66 hrs." Is that a statement you had received from Mr. Palermo?

A. No, this is Mr. Landgraf's handwriting. It is Mr. Landgraf's handwriting.

Q. Mr. Landgraf made that statement out?

A. Yes, that was for "cat" rental.

Q. In other words, Mr. Landgraf for you and Mr. Landgraf kept a record of what was owing to the company?

A. Yes, for the Bolter & Landgraf Lumber Company.

Q. Was there any other dealings between you and Mr. Palermo other than the "cat" rental?

A. Not that year, not in '52.

Mr. Bantz. Any objection?

Mr. Moore: No objection.

The Court: They will be admitted.

(Whereupon, said documents were admitted in evidence as Plaintiff's Exhibits Nos. 52 and 53.) [182]

Mr. Bantz: You may examine.

The Clerk: Marking Defendant's Exhibit 54.

Mr. Bantz: That is Defendant's Exhibit 54, Mr. Taylor?

(Testimony of A. M. Bolter.)

The Clerk: Yes.

The Court: All right.

Cross-Examination

By Mr. Moore:

Q. Handing you Defendant's 54, would you state what that is?

A. Well, it is the number of hours.

Mr. Bantz: I can't hear you, Mr. Bolter.

The Court: You will have to speak up.

A. It is the number of hours.

The Court: Oh, yes. What number of hours?

A. For rental on this "cat."

Q. (By Mr. Moore): I think you better read it again, I am not trying to trap you. I don't understand here.

A. Well, it was rental on caterpillar tractor, tractor rent.

Q. Well, that is a statement from Mr. Landgraf dated May 22nd, 1952, is it not?

A. \$221.27 to Joe Palermo.

Q. To Joe Palermo?

A. Yes, to Joe Palermo.

Q. It is 31,609 feet at \$10.00. Were you paying \$10.00 per thousand? [183]

A. No, that would apply to stumpage that we paid for the lumber cut and he happened to make notation for that on one slip. That "cat" rental was in here.

Q. Well, I am referring to that check for

Testimony of A. M. Bolter.)

221.27, which is the same amount which is set forth
n there? A. Yes.

Q. Now, were you paying \$10.00 a thousand for
he use of the "cat"? A. No, \$3.50 an hour.

Q. \$3.50? A. Yes.

Q. But this does recite lumber cut and delivered,
o many thousands at \$10.00?

A. Yes, that would apply to the stumpage.

Q. Do you mean that could be a statement?

A. That \$10.00 would apply to stumpage that
was paid.

Q. Well, this check for \$221.27, what is that?

A. Well, that was this deal alone. That was Mr.
Landgraf's individual check, and then in this period
ne company took over the rental of the caterpillar
also and the other checks were written by Bolter
nd Landgraf, and this one was an individual deal
with Mr. Palermo.

Q. And so it would be stumpage as well as cater-
pillar rental?

A. That is correct. That is correct.

Mr. Moore: I see. That is all. [184]

The Court: Any other questions?

Redirect Examination

By Mr. Bantz:

Q. The money, Mr. Bolter, shown on the checks,
Plaintiff's 52 and 53 and Defendant's 54 for Iden-
tification that you just looked at, the \$221.27, was
aid to Mr. Palermo?

A. Yes, this amount \$221.27.

(Testimony of A. M. Bolter.)

Q. Plus the other monies as shown on the checks?

A. No. This money here wouldn't have been paid to Mr. Palermo.

Q. Who would that have been paid to?

A. William Jacobson.

Q. In other words, the Defendant's 54 wasn't payable to Mr. Palermo?

A. No, that wasn't paid to Mr. Palermo.

Q. Was the money paid to Mr. Palermo concerning Plaintiff's Exhibits 52 and 53 that you just looked at? What is your answer, yes or no?

A. Well, I am still confused.

Q. This money shown on here, Plaintiff's 52 and 53, was paid to Mr. Palermo? A. Yes, it was.

Mr. Bantz: That is all.

Mr. Moore: Just a minute.

The Court: Just a moment, any other questions? [185]

Mr. Moore: Yes.

Recross-Examination

By Mr. Moore:

Q. I don't doubt that this money was paid to Mr. Palermo, Mr. Bolter, but Exhibit 52, which you said is for "cat" rental, recites on it, and it is only apparently to Mr. Landgraf, recites, "May 22, 31,609 feet" and then it credits \$316.09, and then there is a deduction for labor to Jacobson for \$94.82, and then there is a check for \$221.27 on May 22, 1952. Now, that ties in completely with Exhibit 54?

Testimony of A. M. Bolter.)

A. Yes.

Q. And so it couldn't have been "cat" rental, that is what I want to get straight, it isn't "cat" rental, it is stumpage, 31,609?

A. No, \$221.27 was "cat" rental. I remember that myself, and the other money was paid to the operator of the "cat." I wasn't the partner in the deal when it happened, and it happened individually, and thereafter we took this over in the co-partnership.

Q. This is the co-partnership in Exhibit 53?

A. Yes, Bolter and Landgraf Lumber Company.

Q. And June 30th says, in Plaintiff's Exhibit 52, "15,595 feet of logs at \$10.00." Now, is that stumpage?

A. Well, that could have been the scale of what we did with [186] the "cat" or it could have been the stumpage or it could have been lumber, and it doesn't say there.

Q. It just says so many thousand feet on the logs?

A. Scale on the logs. He evidently was paying the man by the thousand to drive the "cat," that is what it amounted to.

Mr. Moore: That is all.

The Court: Any other questions of this witness?

Mr. Bantz: No, thank you, your Honor.

(Witness excused.)

The Court: The court will recess until one-thirty.

July 24, 1957, 1:30 P.M.

The Court: You may proceed.

Mr. Bantz: Please mark this for identification

The Clerk: Plaintiff's 55, your Honor.

Mr. Bantz: Would you please mark these checks?

The Clerk: And 56.

The Court: Plaintiff's 55 and——

The Clerk: 55 and 56.

The Court: All right.

Mr. Bantz: Your Honor, on Plaintiff's No. 55 for Identification, there are two checks, one dated November 21, 1952, in the amount of \$315.36, and one dated December 22, 1952, [187] in the amount of \$1,857.60, both made payable to Joe Palermo, and are issued by Highland Lumber Company at White—or at Bingen, Washington. Counsel and I have stipulated that they were in payment of logs from Highland Lumber Company for payment to Joe Palermo. Highland Lumber Company is not available now, and these are duplicate copies of original checks.

Mr. Moore: It is so stipulated.

The Court: All right, it will be admitted.

The Clerk: That is 55.

(Whereupon, said checks (2) were admitted in evidence as Plaintiff's Exhibit No. 55.)

Mr. Bantz: Your Honor, in Plaintiff's Exhibit 56 for Identification is a check in the amount of \$100.00 from J. Hofert Company, at Seattle, Washington, and made payable to Joe Palermo and

drawn on the Seattle-First National Bank, and it is stipulated between counsel that we can produce the original, although we could get testimony as to this particular check. It is in the correspondence that J. Hofert Company paid to Joe Palermo in the sum of \$100.00, and I move for admittance on that basis.

Mr. Moore: No objection.

The Court: It will be admitted. [188]

Mr. Velikanje: What is the date of the check?

Mr. Bantz: August 1, 1952, is the date of the check.

The Clerk: 56.

(Whereupon, said check was admitted in evidence as Plaintiff's Exhibit No. 56.)

Mr. Bantz: Mr. Courtney, please.

JOSEPH COURTNEY, JR.

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Will you state your name, please?

A. Joseph Courtney, Jr.

Q. Can you hear me all right, Mr. Courtney?

A. Yes.

Mr. Bantz: If you can't hear now you just speak up because I want you to hear each question.

Q. Where do you reside, Mr. Courtney?

A. Bingen, Washington.

Q. Where? A. Bingen, Washington.

(Testimony of Joseph Courtney, Jr.)

Q. And how long have you lived there? [189]

A. Oh, I have lived in that vicinity for forty-two years.

Q. All right. And what business are you in now?

A. I am employed by S.D.S. Lumber Company.

Mr. Moore: S. D. S. Lumber Company?

A. Yes, that's right.

Q. (By Mr. Bantz): What business were you engaged in in 1949 and 1950?

A. I ran the sawmill.

Q. And where was the sawmill located?

A. On the Snowden Road, Klickitat County.

Q. That is down by Bingen somewhere?

A. Yes.

Q. Do you know a man by the name of Joe Palermo? A. Yes.

Q. Is he in the courtroom? A. Yes, sir.

Q. Have you had business with Mr. Palermo?

A. Yes.

Q. Did you get a subpoena to produce some records in court today? A. Yes; I did.

Q. And did you bring the records with you?

A. Yes; I did.

Q. Have you marked it in here, in this book, the pages that I—concerning the subpoena that I asked you to produce [190] the records?

A. Yes. That is 1949.

Mr. Bantz: All right. Your Honor, I am going to have this marked, the whole book, and will offer the book with the understanding that it will be—there are just certain pages pertaining to the de-

(Testimony of Joseph Courtney, Jr.)

pendant in there and I have photostatic copies and after the defense counsel has examined it, if he wishes, just for the purpose of saving bulk in there, I would like to be able to substitute the photostats after they have compared them.

The Court: If there is no objection.

Mr. Moore: No objection.

The Clerk: I will mark the book and mark the photostatic copies and as soon as I can give those sub-numbers, it will be Plaintiff's 57 for Identification.

Q. Mr. Courtney, handing you Plaintiff's 57 for Identification, I take it this is a book that you brought with you? A. That's right.

Q. Now, what do you have in this book; what is it?

A. I have the records of logs that I purchased.

Q. While you were in the logging business?

A. Yes.

Q. All right; in here are there some records concerning Joe Palermo?

A. Yes; there are. [191]

Q. Will you just show me where they are in this book? A. They are here.

Q. Now, you are pointing to Page 60 in the book, is that correct? A. Yes.

Q. All right. Now, I notice that you have got some clips?

A. That is the total amount of logs that I purchased from him.

Q. Speak up.

(Testimony of Joseph Courtney, Jr.)

A. That is the total amount of logs that I purchased from him in——

Q. Will you please speak up so the jury can hear you?

A. This is the record of the total amount of logs that I bought from Joe Palermo in 1949.

The Court: And what page is that?

Q. That is page 85, is that correct?

A. Yes.

The Court: Page 85 is the total?

Q. For the year 1949? A. Yes.

Mr. Velikanje: I thought you said 60.

The Court: That is the first page.

Q. We started on Page 60 but the total is on Page 85, is that correct? A. Yes. [192]

Q. Both for the year 1949?

A. That's right.

Q. Now, you have one other clip in here in which is Page 95, is that correct?

A. That's right.

Q. Now, Page 95 to 110, or just Page 95?

A. Yes.

Q. Now, what does that concern?

A. That is logs that I purchased from Joe Palermo in 1950.

Q. And on Page 95, to the best of your knowledge, does it show all of the logs that you purchased from Joe Palermo in the year 1950?

A. Yes.

Q. Now, Mr. Courtney, to the best of your ability do you know if there are any other purchases in

(Testimony of Joseph Courtney, Jr.)

here concerning Mr. Palermo? A. No.

Q. No? A. That's right.

Mr. Bantz: Your Honor, if I may just have a moment on comparison here (comparing documents with Mr. Moore). Your Honor, on Page 95 for the year 1950 I am substituting, or giving a photostatic copy to the Clerk and ask that it be Plaintiff's 57 or whatever number he desires on it. Is that [193] "A"?

The Clerk: "A."

Mr. Bantz: I am going to move for the admission of 57-A as it deals with the year 1950, your Honor.

The Court: All right.

Mr. Bantz: And I might add that there are other names in the Exhibit 57-A, other than Joe Palermo but we are only dealing with the name of Joe Palermo.

The Court: The jury will consider only the reference to Joe Palermo and not the other individuals on the exhibit.

Q. (By Mr. Bantz): Mr. Courtney, do you have any cancelled checks for these?

A. No; I have not.

Q. These are the only records you have concerning these? A. Yes; that is right.

Mr. Moore: Payment was made by check, Mr. Courtney?

A. Payments were made by check.

Mr. Moore: As reflected in here?

A. Yes; that's right.

Mr. Moore: No objection.

(Testimony of Joseph Courtney, Jr.)

The Court: It will be admitted. 57-a.

(Whereupon, said photostatic copy was admitted in evidence as Plaintiff's Exhibit No. 57-A.)

Q. (By Mr. Bantz): Mr. Courtney, referring to Plaintiff's [194] Exhibit 57-A—put your glasses back on so that you can see here now—you will see an item dated January 30—— A. June 30.

Q. June 30th. Oh, you see better than I do. June 30th, Joe Palermo, 31,100 truck.

A. That was on logs——

Q. Speak up, please.

A. That was some logs that I purchased from Joe Palermo, and that \$933.00 was credited to him on a truck that he had purchased from me.

Q. In other words, you gave him credit instead of paying him a check? A. That is correct.

Q. Now, referring again, Mr. Courtney—I am referring to Plaintiff's Exhibit No. 57-A—Joe Palermo, \$433.62, that was by check?

A. Yes; that's right.

Q. On May 8, Joe Palermo, \$455.84, that was by check? A. Yes.

Q. And Joe Palermo, June 20th, \$172.50, by check?

A. By check.

Q. And June 30th, that is the item I went over concerning the truck? A. Yes.

Q. And July 21st? [195] A. \$437.10.

Q. \$437.10? A. That's right.

(Testimony of Joseph Courtney, Jr.)

Q. And that was by check?

A. Yes; by check.

Q. And what were those checks for?

A. For logs purchased.

Q. And also \$933.00, what was that for?

A. For logs purchased.

Q. And also you did it on a credit basis?

A. That's right.

Q. Do you know if you have ever done any other business with Mr. Palermo as to logs other than what is listed in your books, Mr. Courtney?

A. No.

Q. In other words, everything you can recall is on your books there? A. That's right.

Mr. Bantz: You may examine.

Cross-Examination

By Mr. Moore:

Q. When did you sell the truck to Mr. Palermo?

A. I sold the truck to—I can't remember the exact date but it was some time in 1950. In the Spring of 1950.

Q. Some time in 1950? [196]

A. Yes; that's right.

Q. What kind of truck was it?

A. It was a Ford logging truck.

Q. With a trailer or without a trailer?

A. No; it was a solo rig.

Q. Was that price \$933.00?

A. No; it wasn't.

Q. How much was the truck? A. \$1,600.00.

(Testimony of Joseph Courtney, Jr.)

Q. Did he pay you the difference between the \$933.00 and \$1,600.00 when he got the truck?

A. No; not when he got the truck but when we settled up in the fall Joe paid me in full.

Q. Do you have a written contract with you?

A. No; I don't have a written contract with me.

Q. You just gave him the truck and told him how much it was going to be and he paid you eventually?

A. That is right. He was delivering logs.

Mr. Moore: That is all.

Redirect Examination

By Mr. Bantz:

Q. Mr. Courtney, was Mr. Palermo delivering logs to your sawmill with the truck?

A. Yes; he did.

Mr. Bantz: Nothing further. [197]

Mr. Moore: No further questions.

The Court: That is all, Mr. Courtney.

(Witness excused.)

EDWARD LAWSON

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Would you state your name, please?

A. Edward Lawson.

(Testimony of Edward Lawson.)

Q. And where do you reside, Mr. Lawson?

A. Portland, Oregon.

Q. And what is your occupation?

A. I am office manager for Columbia-Hudson Lumber Company.

Q. Where is Columbia-Hudson Lumber Company located?

A. Bradwood, Oregon.

Q. And where is Bradwood, Oregon?

A. It is twenty miles east of Astoria.

Q. Twenty miles east of Astoria?

A. Yes.

Q. And how long have you been with the Columbia-Hudson Lumber Company?

A. Since March, 1954.

Q. Did you say since 1954 you have been with them? [198]

A. Yes.

Q. And did you have a subpoena issued you to bring some records here to the trial today?

A. Yes; I did.

Q. And you brought them, didn't you?

A. Yes.

Mr. Bantz: I think those are Plaintiff's 33 and 34, Mr. Taylor, identifications.

Q. Mr. Lawson, where all does Columbia-Hudson Lumber Company deal in logs or in lumber?

A. Well, they obtain logs from the—in the pass up in Washington, I suppose up in Lyle and some spots down the river and they were towed down the river to the mill.

Q. And after they were towed down, where were the checks issued in payment for those logs?

(Testimony of Edward Lawson.)

A. Our office in Portland issues those checks.

Q. And that is the type of business you have been doing with them since 1954? A. Yes.

Q. Now, I believe you had a subpoena to bring records for the years of 1947 and 1948, is that correct? A. No; I think it is 1948 and 1949.

Q. Pardon me, 1948 and 1949?

A. Yes, sir.

Q. And where did you get the records that you brought? [199]

A. Well, the records were at our mill at Bradwood in storage.

Q. Did you have them sent down to you?

A. They were sent up to Portland, Oregon.

Q. Into Portland, Oregon? A. Yes.

Q. Now, handing you Plaintiff's 33, will you examine that? Is that the group of records that you brought concerning the year 1948?

A. Yes; it is.

Q. And were they from your files up at Bradford, Oregon? A. No; Bradwood.

Q. Bradwood, Oregon?

A. Yes; Bradwood.

Q. How would you classify these?

A. Well, these are checks issued in payment of logs with the supporting invoices.

Q. The invoices cover the breakdown as to what the total amount for certain checks?

A. Yes; that's right.

Q. And they are for your company that you are bookkeeper for? A. Yes; that's right.

(Testimony of Edward Lawson.)

Q. And who were they made payable to?

A. To Joe Palermo.

Q. Do you recognize the signatures on the checks here? [200]

A. Yes; I do.

Q. And did you look through these checks before you came here to be sure that they were all from your company?

A. Yes; I have.

Q. Now, looking at Plaintiff's Exhibit 34 for identification, are they part of the records that you brought with you today?

A. Yes; they are.

Q. And are they some of the ones that you received from Bradwood, Oregon?

A. Yes; they are.

Q. And do you recognize the signatures?

A. Yes; I do.

Q. And who are they payable to?

A. To Joe Palermo.

Q. And for what year?

A. For the year 1949.

Q. All of them are for the year 1949?

A. Yes.

Q. All right. What would the checks in Plaintiff's 33 and 34 be issued for?

A. For logs.

Q. Mr. Lawson, did you bring any other papers or documents with you?

A. No; I did not. [201]

Mr. Bantz: You may examine.

Mr. Moore: No questions.

The Court: That is all, then.

(Witness excused.)

Mr. Bantz: Mr. Anderson, please. Just step right up.

R. T. ANDERSON

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Will you state your name, please?

A. R. T. Anderson.

Q. And, Mr. Anderson, where do you reside?

A. White Salmon, Washington.

Q. And in what occupation are you engaged?

A. In accounting.

Q. And how long have you been in the accounting business?

A. Eleven years.

Q. And have you been eleven years at White Salmon?

A. Well, my office is in Bingen.

Q. Well, in that locality you have been there eleven years?

A. Yes.

Q. Now, are you familiar with a man by name of L. C. Coleman? [202]

A. Yes; I am.

Q. And what was your relationship with Mr. Coleman?

A. Bookkeeper.

Q. You did accounting or bookkeeping work for him?

A. Yes, sir.

Q. Are you familiar with the name "Jackknife Mill"?

A. Yes.

Q. And what is your relationship as to the Jackknife Mill?

A. Bookkeeping.

Q. Bookkeeping?

A. Yes.

(Testimony of R. T. Anderson.)

Q. Were you issued a subpoena to bring some records here with you? To bring them into court were you issued a subpoena? A. Yes.

Q. And you brought them with you?

A. Yes.

Mr. Bantz: May I have them?

The Clerk: Plaintiff's 58 and 59 and 60.

Q. Mr. Anderson, handing you Plaintiff's Exhibit 58 for Identification, will you state what that is, please?

A. It is a check payable to Joe Palermo for—

Q. Speak up now because these people have to hear you, Mr. Anderson.

A. A check made payable to Joe Palermo for \$1,368.00 signed [203] by L. C. Coleman on the Jackknife Mill.

Q. What is the date of that check?

A. October 31, 1952.

Q. And handing you Identification 60, will you examine that, please? Do you recognize the Plaintiff's Exhibit 60 for Identification? A. Yes.

Q. What is that?

A. Part of the journal sheet.

Q. What company is it from?

A. From the Jackknife Mill.

Q. Were you the accountant for Jackknife Mill?

A. Yes.

Q. And was that Exhibit 60 prepared either by you or in your office?

A. Prepared in my office.

Q. In your office? A. Yes.

(Testimony of R. T. Anderson.)

Q. Now, referring down to Line 27 on the face of Plaintiff's 60, there is the name of Joe Palermo. Do you see that? A. Yes, sir.

Q. And also then what is the figure on the right-hand side as to the amount of the check?

A. \$1,368.00.

Q. By comparison does that appear to be the same—or for the [204] check on Plaintiff's Exhibit 58, does that appear to be the same as on Plaintiff's 60 for Identification? A. Yes; it does.

Q. And do you know what this check was for?

A. Well, it indicates here that it was for log purchases.

Q. All right; that is on the right-hand side of Plaintiff's Exhibit 60 for Identification?

A. Yes.

Mr. Bantz: I will offer Plaintiff's 58 and 60, and, I might state, your Honor, as to Plaintiff's 60 for Identification I am only concerned with Line 27, which states the name of Joe Palermo in the sum of \$1,368.00, and the words "Log Purchases." Otherwise, I believe it is immaterial to this case.

Mr. Moore: No objection.

The Court: It will be admitted. 58 and 60.

(Whereupon, said documents were admitted in evidence as Plaintiff's Exhibits Nos. 58 and 60.)

Q. Mr. Anderson, handing you Plaintiff's Exhibit 59 for Identification, state what those are, will you, please?

(Testimony of R. T. Anderson.)

A. They are also cancelled checks.

Q. And who are they made payable to?

A. They are all made payable to Joe [205] Palermo.

Q. Now, is your signature on those checks?

A. Yes; it is.

Q. And will you just tell me why is your signature on there?

A. Well, it was requested by——

Q. I mean you are a co-signer on those checks, is that it? A. Yes.

Q. And you can identify them from your own signature, can you? A. Yes; I can.

Q. And what account are these checks drawn on?

A. Jackknife Mill.

Q. And for what year are these concerned?

A. In 1953.

Q. Mr. Anderson, what were these checks issued for? A. For logs—for log purchases.

Q. For the year 1953? A. Yes.

Q. And would that be from Joe Palermo?

A. Yes.

Mr. Bantz: I will offer in evidence Plaintiff's 59.

Mr. Moore: No objection.

The Court: It is admitted.

(Whereupon, said group of checks was admitted in evidence as Plaintiff's Exhibit No. 59.) [206]

Mr. Bantz: Pardon me, I am sorry. If I may, I

(Testimony of R. T. Anderson.)

want that a moment, your Honor, in order to read it.

The Court: All right.

Mr. Bantz: Plaintiff's Exhibit 58 is a check in the amount of \$1,368.00 drawn to Joe Palermo by Jackknife Mill. Plaintiff's Exhibit 59 are checks drawn by Jackknife Mill to Joe Palermo starting with February 16, 1953, and ending with May 19, 1953, in the amounts of \$78.12, \$111.24, \$2,271.68, \$3,615.35, \$2,388.68, \$3,747.57, \$3,870.10, \$5,046.28.

You may examine, Mr. Moore.

Cross-Examination

By Mr. Moore:

Q. Mr. Anderson, did you get these checks and that ledger sheet from Mr. Coleman?

A. Yes, sir.

Q. The ones that you brought up here?

A. Yes, sir.

Q. Are those the only records Mr. Coleman had with reference to Joe Palermo selling logs in 1952 and 1953?

A. That is all that he gave me.

Q. That is all that he gave you?

A. Yes.

Q. Was he the sole owner, Mr. Coleman, of the Jackknife Mill, as far as you know?

A. I think he was at that time. [207]

Q. And is that mill no longer in existence, I mean, as the Jackknife Mill owned by—

A. Not as the Jackknife Mill, no.

Q. What happened to the Jackknife Mill, did

(Testimony of R. T. Anderson.)

it go broke? A. Yes; it did.

Q. And do you know whether or not Mr. Palermo received all the money from the Jackknife Mill that he had coming for logs sold?

A. I am not certain that he did.

Mr. Moore: I think that is all.

Mr. Bantz: That is all, Mr. Anderson.

(Witness excused.)

Mr. Bantz: Mr. Blankenship, please.

DONALD M. BLANKENSHIP

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Will you state your name, please?

A. Donald M. Blankenship.

Q. And where do you live, Mr. Blankenship?

A. Presently residing at Seattle, Washington.

Q. And where did you reside in the years 1953 to 1955? A. Yakima, Washington.

Q. And who is your employer? [208]

A. District Director of Internal Revenue.

Q. You work for the Internal Revenue Service?

A. Yes.

Q. And what is your position with the Internal Revenue? A. Internal Revenue Agent.

Q. And when did you become an Internal Revenue Agent? A. November 13, 1950.

(Testimony of Donald M. Blankenship.)

Q. Where did you go to college?

A. University of Washington.

Q. What did you take?

A. Majored in Accounting.

Q. Are you a licensed C.P.A.?

A. Yes, sir.

Q. And what does C.P.A. mean?

A. Certified Public Accountant.

Q. Now, Mr. Blankenship, are you familiar with the case of the United States vs. Joe Palermo?

A. Yes, sir.

Q. And did you participate in that case as part of your duties with the Internal Revenue Department?

A. Yes, sir.

Q. Now, I asked you to bring certain records with you into court today. Did you bring those with you?

A. Yes, sir.

The Clerk: Marking Plaintiff's 61, 62, 63. [209]

Q. Let me just ask him a question: Was this attached to one of the other ones?

A. Yes, sir.

Q. Which one, do you know?

A. No.

The Clerk: Plaintiff's 64 and 65.

Mr. Bantz: Mark those separately, Mr. Taylor.

Q. Are all those separate sheets or together?

A. Separate.

The Clerk: 66, 67, 68, 69.

Mr. Bantz: Each one separately unless they are clipped together.

The Clerk: The remaining ones will be 70 to 74.

Q. Mr. Blankenship, do you know Mr. Palermo?

A. Yes, sir.

(Testimony of Donald M. Blankenship.)

Q. And he is the defendant in this case?

A. Yes, sir.

Q. The one that we are talking about?

A. Yes.

Q. Now, I am handing you Plaintiff's Identification 61; would you state what that is and if there is any date on it?

A. This is the Power of Attorney submitted to me by Mr. Moore, authorizing him to act before the Treasury Department for Mr. Palermo and received by me on [210] December 23, 1954.

Q. Handing you Plaintiff's Exhibit 62 for Identification, will you state what that is, please?

A. This is Power of Attorney authorizing I. Allen Brown, C.P.A., to act for Joe Palermo. This hasn't the date on it but I do recall it was received around October 19, 1954.

Q. And they are authorized to act in what?

A. To represent the taxpayer before the Treasury Department.

Q. Handing you Plaintiff's Exhibit 63 for Identification, will you state what that is?

A. This is another Power of Attorney authorizing I. Allen Brown, C.P.A., to act before the Treasury Department to represent Bertha Palermo, and it would be received around February—or December, 1954.

Q. Handing you Plaintiff's Exhibit 64 for Identification, will you state what that is?

A. This is Power of Attorney naming I. Allen Brown and John S. Moore, and E. F. Velikanje to

(Testimony of Donald M. Blankenship.)

act for Joe Palermo before the Treasury Department, dated November 28, 1955.

Q. And handing you Plaintiff's Exhibit 65 for Identification, what is that?

A. Power of Attorney, naming John S. Moore, I. Allen Brown and E. F. Valikanje to act for Joe Palermo—rather [211] Bertha Palermo before the Treasury Department, received by me on November 30, 1955.

Q. And for what years were these Powers of Attorney concerned with as to their representation with the Internal Revenue Service? You can check on that.

A. The Power of Attorney received on November 30th, 1955, covers the years 1946 through 1954.

Q. Mr. Blankenship, are these Power of Attorneys received in connection with the case at issue here today?

A. Yes, sir.

Mr. Bantz: Do you want to see them?

Mr. Moore: Yes.

Mr. Bantz: Any objection? I am going to offer them in evidence.

Mr. Moore: I don't see the materiality of them, your Honor.

Mr. Bantz: Your Honor, I think I have some statements now that I received from counsel and he couldn't represent him unless he had a Power of Attorney, and I have a net worth statement and some other financial statements, and the only way I feel that I can put them in is through the power of attorney saying that they were authorized to

(Testimony of Donald M. Blankenship.)

turn them over to us, and that they are true and correct.

The Court: Well, for that purpose they will be admitted. It is the authority of counsel to act for the [212] defendant, is that correct?

Mr. Moore: Yes.

The Court: For that limited purpose they will be admitted.

(Whereupon, said Power of Attorneys were admitted in evidence as Plaintiff's Exhibits Nos. 61, 62, 63, 64, and 65.)

Q. Now, Mr. Blankenship, handing you Plaintiff's Exhibit 66 for Identification, would you state what that is?

A. It is a statement for Joe and Bertha Palermo called a "Net Worth Trace," 1949 through 1953.

Q. Where did you receive that, and how did you receive it?

A. I received it from Mr. Moore.

Q. Do you know when you received it?

A. Yes. My date—I dated it December 23, 1954.

Q. And does that concern the net worth of Joe Palermo in that? A. Yes.

Q. And what years does that cover?

A. It covers 1949, 1950, 1951, 1952 and 1953.

Q. I will hand you Plaintiff's Exhibit 67 for Identification. Will you examine that? What is that?

A. It is a statement for Joe and Bertha Palermo, White Salmon, Washington, "Differences

(Testimony of Donald M. Blankenship.)

Between Reported Income and Indicated Net Income, for the years '51, '52 and '53. [213]

Q. And where did you receive it from?

A. I received it from Mr. Moore.

Q. When?

A. At the same time, December 23, 1954.

Q. And both 66 and 67 exhibits were received in connection with the power of attorney that we have now in evidence? A. Yes, sir.

Q. Handing you Plaintiff's Exhibit 68 for Identification, would you please state what that is, if you know?

A. This is a "Statement of Profit and Loss" for Joe and Bertha Palermo, White Salmon, Washington, for the calendar years 1951, 1952 and 1953.

Q. All right; where did you receive it and when did you receive it?

A. I received it from Mr. Moore, December 17, 1954.

Q. When? A. December 17, 1954.

Q. And in what city did you receive it?

A. Yakima, Washington.

Q. And was that in connection with the power of attorney that the Internal Revenue Service had received?

A. At that time it was—Mr. Moore's power of attorney had been received.

Q. Who does it state is the paper that it is on?

A. It is on the stationery of Mickelwait and Brown, [214] Certified Public Accountants.

Q. Who is Mr. Brown?

(Testimony of Donald M. Blankenship.)

A. The C.P.A. in this case.

Q. And he is the gentleman sitting here?

A. Yes; sitting at the counsel table.

Q. And there was a power of attorney for Mr. Brown, was there? A. Yes.

Q. And handing you Plaintiff's Exhibit 69 for Identification, will you examine that and state what it is, if you know?

A. This is statement of deposits in the National Bank of Commerce, White Salmon, for Joe and Bertha Palermo, 1951, 1952 and 1953, and showing a comparison between the deposits per bank statements and deposits not in book, and sales not in the bank.

Q. When did you receive this one?

A. I received it on January 6, 1955.

Q. In connection with the power of attorney that is now in evidence? A. Yes, sir.

Q. Now, Mr. Blankenship, have 66, 67, 68 and 69 for Identification, have they been in the custody of either yourself or the Internal Revenue since you received them? A. Yes, sir.

Q. To your knowledge, have they been changed, altered, or in any manner changed from the time you got them? [215] A. No, sir.

Mr. Bantz: Your Honor, I am going to offer Plaintiff's Exhibits 66, 67, 68, and 69 for Identification into evidence.

Mr. Moore: May I ask one question, your Honor?

The Court: Yes; surely.

Mr. Moore: Plaintiff's Exhibits for Identifica-

(Testimony of Donald M. Blankenship.)

tion 66, 67, 68 and 69, Mr. Blankenship, were all delivered to you by me in connection with this case, is that correct? A. Yes, sir.

Mr. Moore: No objection.

The Court: They will be admitted.

(Whereupon, said documents were admitted in evidence as Plaintiff's Exhibits Nos. 66, 67, 68 and 69.)

Q. Handing you Plaintiff's Exhibits for Identification 70, 71, 72, 73, and 74, will you please examine each one of those and by number state what they are and what date they are concerned with?

A. Plaintiff's Exhibit 74—pardon me, Plaintiff's Exhibit 70 is a photostatic copy of the sales records of Joe Palermo for 1949.

Q. Where did you get that photostat?

A. They were given to me by Mr. Moore. [216]

Q. The photostats were? A. Yes, sir.

Q. And was that given to you in connection with the power of attorney that is now in evidence?

A. Yes, sir.

Q. All right; continue with 71.

A. Exhibit 71 is a sales record—copy of sales record for Joe Palermo for 1951 given to me by Mr. Moore.

Q. What year does that cover?

A. It covers the year 1950.

The Court: 1950?

A. 71 is '50.

The Court: Is 70 for '49?

(Testimony of Donald M. Blankenship.)

A. Yes, sir.

Q. Go ahead with 72.

A. 72 is a photostatic copy of sales records for 1951 given to me by Mr. Moore.

Q. Continue.

A. Exhibit 73 is photostatic copy of sales records for 1952 given to me by Mr. Moore, and 72 is photostatic copy of sales record of Mr. Palermo for 1953 given to me by Mr. Moore.

Q. Now, each of the Exhibits 70 through 74, inclusive, were given to you in connection with the power of attorney that is in evidence now, is that correct? A. Yes, sir. [217]

Q. Do you know where the originals are, Mr. Blankenship?

A. I believe they are in the courtroom.

Q. I mean, are they in your possession?

A. No, sir.

Q. Are they in possession of the Internal Revenue? A. No, sir.

Q. Do you have any way with which we can obtain the originals? A. No; not that I know.

Mr. Bantz: I think the Court will take judicial knowledge that the originals are with the defendant.

The Court: Well, we will wait and see if they will object to the offer when you offer them.

Mr. Bantz: I am going to offer 71, 72, 73, and 74, and I am not offering 70 at this time.

Mr. Moore: No objection.

The Court: They will be admitted. 71 through 74?

Mr. Bantz: Yes, your Honor.

(Testimony of Donald M. Blankenship.)

(Whereupon, said photostats were admitted in evidence as Plaintiff's Exhibits Nos. 71, 72, 73, and 74.)

Q. Mr. Blankenship, did you state how long you had been with the Internal Revenue Service?

A. Yes, sir. [218]

Q. How long was it; how long have you been with the Internal Revenue Service?

A. Well, the period is about six and a half years.

Q. Are you familiar with the requirements as to the filing of income tax returns in the United States?

A. Yes, sir.

Q. What are the requirements?

A. If any individual has a gross income of \$600.00 or more he is required to file a return.

Q. And where does he file the return?

A. He files the return in the district in which he resides or has his principal place of business.

Q. Now, what district is Bingen and White Salmon, Washington, in?

A. District of Washington.

Q. Does the District of Washington encompass the whole state?

A. Yes, sir.

Q. Mr. Blankenship, if an individual is married, how do they file or how can they file income tax returns?

A. There are two ways.

Q. What are the two ways?

A. In our state here you can either file joint or separate returns.

(Testimony of Donald M. Blankenship.)

Q. Well, when you say joint returns, what do you mean by that?

A. Both names appear on the return and both sign. [219]

Q. Man and wife?

A. Yes; husband and wife, that's right.

Q. Now, have you examined the income tax returns in this case which are Plaintiff's Exhibits 3, 4, and 5——

A. Yes, sir.

Q. Or, 3, 4, 5 and 6, I guess, they are?

A. Yes, sir.

Q. Have you examined those?

A. Yes, sir.

Q. Are those what you call joint returns?

A. Yes, sir.

Q. Now, what is the terminology, "Gross Income," what does it mean?

A. It generally means salary, wages, interest, dividends, gross receipts from the operation of the business if he is on a cash basis; gross profit from the operation of the business if you are on accrual.

Q. Gross profit now is what; state that again?

A. Gross Income?

Q. Yes.

A. That is it can include gross receipts from the business if you are on a cash basis, or the gross profit from the operation of the business if the taxpayer is on the accrual basis of accounting.

Q. Is it true that gross profit is gross income when? [220]

A. Yes, sir.

The Court: Are these returns all on a cash basis?

(Testimony of Donald M. Blankenship.)

Mr. Bantz: Yes.

The Court: If there is no dispute about that, if they are all on a cash basis I suggest you not confuse the jury on that by getting on the accrual.

Mr. Bantz: I was just trying to straighten it out for them.

Q. The returns, Mr. Blankenship, do you know if they are on accrual or cash basis?

A. Cash basis.

Q. Explain what does cash basis mean?

A. Generally it means that you will account for income when you receive it in cash and you claim expenses when you pay for those.

Q. And by cash you mean in any negotiable form? A. Yes.

Mr. Bantz: You may examine, Mr. Moore.

Cross-Examination

By Mr. Moore:

Q. Are Exhibits 66 through 69, 71 through 74 and Exhibit for Identification 70, all of the information that was provided to you in connection with the case by myself, Mr. Palermo and Mr. Brown?

A. I believe there are some depreciation [221] schedules.

Q. There were some depreciation schedules?

A. Yes. Reserve depreciation schedules and I believe a list of bank deposits, National Bank of Commerce of White Salmon.

Q. And you were granted the right to go over

(Testimony of Donald M. Blankenship.)

Mr. Palermo's books; you did go over Mr. Palermo's books? A. Yes, sir.

Q. And his cancelled checks and bank statements? A. Yes, sir.

Mr. Moore: May we approach the bench, your Honor?

The Court: All right.

Mr. Moore (With counsel at the bench out of hearing of the jury): This seems like a pretty good time, your Honor, if he rendered any reports in this case, in connection with this case, to make a demand to see their reports and then we can get into our discussion.

The Court: Suppose I just excuse the jury for recess.

Mr. Bantz: We are getting so speedily through this today and I have gone through ten witnesses today and I am wondering if we could finish up this argument. I have got three more witnesses which will take only maybe thirty minutes and then I would come back with Paul Simonson which would go through today.

The Court: I was going to recess at 4:00 o'clock today.

Mr. Bantz: We could have recess and then come back [222] and argue this motion and he can ask the question and I can object to it.

The Court: I don't think it is necessary for you to make demand in the presence of the jury. The court will take a ten-minute recess.

(Testimony of Donald M. Blankenship.)

(Whereupon, the following proceedings occurred after recess and in the absence of the jury.)

The Court: I think I may have misunderstood you, Mr. Moore, the reason I didn't excuse the jury for recess I thought you said that you wished to ask this witness, and I assume in the presence of the jury, if he had a report.

Mr. Moore: I don't think it is necessary, your Honor.

The Court: Well, then, I may as well excuse the jury.

(Whereupon, the following proceedings occurred in the presence of the jury.)

The Court: Now, ladies and gentlemen of the jury, we have reached a point in the trial where it will be necessary for the Court to hear the attorneys on some law points with which the jury is not concerned, and rather than keep you around here the rest of the afternoon—I think it will take the rest of the afternoon to take care of these matters—I think I will excuse you until tomorrow morning. The jury will be excused until tomorrow morning at 10:00 o'clock and you can return then.

(Whereupon, the following proceedings occurred in the absence of the jury.) [223]

The Court: All right, Mr. Moore.

Q. (By Mr. Moore): Mr. Blankenship, you testified before in connection with Exhibits 67 through

(Testimony of Donald M. Blankenship.)

59 and 71 through 74 and Exhibit for Identification No. 70, relating that those matters were submitted to you by me in connection with this case?

A. Yes.

Q. And that in addition you examined Mr. Palermo's tax returns, Exhibits 3, 4, 5, and 6, I believe it was, and that you had become acquainted with Mr. Palermo in connection with this case. Along that line, and as the same relates to this case, did you in the course of your employment for the Internal Revenue Service, submit written reports to your superiors in connection with your investigation which resulted in this case?

Mr. Bantz: Your Honor, I would object to him answering the question as being immaterial to the case in hand. But if there was some purpose in the inquiry as to impeachment or something that was said—the witness has only testified on direct examination as to records which were turned over to him in his possession by other counsel, not what was in the records, but just the naming off of them, and this witness not having testified to anything on direct examination concerning the case but except for the matters in evidence, I think that the questioning should be limited to the scope of the [224] direct examination, and it is certainly immaterial what he said in an inter-office communication to his superiors in any form unless the matter comes up in the form of evidence in the trial, either through direct evidence or through some exhibit that is put in.

(Testimony of Donald M. Blankenship.)

The Court: I think we might as well have him answer the question in the absence of the jury to find out whether he did make reports or not and decided whether that will be admitted.

Mr. Moore: All right; you may answer.

A. Yes; I did.

Q. And in the course of making those reports, that would have been during the period that you first began an examination into Mr. Palermo's income tax returns, is that correct? A. Yes, sir.

Q. And that was started when? A. 1954.

Q. In the Fall of 1954?

A. The first date would be September 28, 1954.

Q. And those reports that you submitted would have included references to the Exhibits 71, 72, 73, and 74, and Exhibit for Identification 70, all being the photostats of sales records; and also with reference to Exhibits 3, 4, 5, and 6, being the tax [225] returns? A. I don't—

Mr. Bantz: Just a minute. Your Honor, I don't understand the question. It appears to me that it is so broad that it couldn't be answered. He is starting out with the exhibits that he received from Mr. Moore and that goes back to the income tax returns themselves. Now, if he made a report concerning the income tax returns and found fault with the income tax returns that is a different matter, from the items that are in 66 through 70 and 71 through 74, those are just matters that were turned over to us; I mean that the defendant himself turned them over to us. Certainly there can be no inquiry as to

(Testimony of Donald M. Blankenship.)

those. It would have to be limited to something received from the defendant because we are applying Rule 16 and Rule 17 at the time of trial, along with the Jenks case in conjunction with the Browning case, and certainly they just have something that they gave to us and had the originals there. He is asking duplicate questions and they can't be answered.

The Court: I think that the purpose of Mr. Moore's question is to find out whether he made any reports, rather than for his opinion. He may answer.

A. Of course, my report makes reference to the income tax returns. As to the other exhibits, I don't think so. I am not sure. I don't think so. I am not sure that would be a sales record if my exhibit numbers are correct. [226]

Q. Yes; 71 through 74.

A. I don't recall making any specific references to that—to those sales records.

The Court: Let me see, Mr. Blankenship. I think you said in your direct examination here that you were an Agent of the Bureau of Internal Revenue?

A. Yes.

The Court: And were you working at the time out of the Tacoma office?

A. Out of the Yakima office.

The Court: Yakima office here?

A. Yes.

The Court: To whom did you make these reports?

(Testimony of Donald M. Blankenship.)

A. I made them first to my group supervisor.

The Court: Where is your group supervisor?

A. In Seattle, Washington.

The Court: I see. Where were you stationed at the time of the work?

A. In Yakima.

The Court: In Yakima, and you were doing the work around White Salmon and Bingen?

A. Yes.

The Court: Did you have a superior in the Yakima office?

A. No; I didn't. [227]

The Court: You were alone here at your office?

A. Yes.

The Court: Working alone?

A. Yes.

The Court: And who was your immediate superior then?

A. At that time and still is Mr. E. P. Hunt.

The Court: In the Seattle office of the Bureau of Internal Revenue?

A. Yes.

The Court: Is that where you were making these communications and reports?

A. Yes, sir.

The Court: Is that in the nature of a communication from the Yakima office to the Seattle office of the Bureau?

A. Yes; it was from me as an Agent to my supervisor.

(Testimony of Donald M. Blankenship.)

The Court: Were you working under the direct supervision of anybody?

A. Only from the supervisor in Seattle.

The Court: The supervisor in Seattle?

A. Yes.

The Court: And that is where these reports went?

A. Yes.

The Court: And those reports covered all of your activities, I suppose, in connection with the case as the case progressed? [228]

A. Yes.

The Court: Were the documents that you obtained here, as you testified, and have been admitted in evidence now, were they transmitted to the Seattle office as you received them?

A. No, your Honor.

The Court: What did you do with them?

A. I retained them in my file.

The Court: You kept them here?

A. Yes.

The Court: Do you have any further questions, Mr. Moore?

Mr. Moore: I thought I might ask along another line, your Honor, in order to possibly clarify the situation so that we can get it out of the way this afternoon.

The Court: All right.

Q. (By Mr. Moore): In line with this investigation, Mr. Blankenship, after September, 1954, you worked with Mr. Paul Simonson also, did you not?

(Testimony of Donald M. Blankenship.)

A. Yes.

Q. In investigating Mr. Palermo and his tax returns? A. Yes; I did.

Q. And the investigation continued thereafter with you and Mr. Simonson working together?

A. Yes, sir. [229]

Q. And in the course of that investigation both you and Mr. Simonson would render reports at either regular or irregular times to your superiors in the Internal Revenue Service in Seattle?

A. Only at the conclusion did I render a report, except perhaps maybe an oral statement.

Q. And to your knowledge did Mr. Simonson render written reports to the Seattle office on more than one occasion? A. Pardon me?

Q. On more than one occasion?

A. To my knowledge, no.

Q. The reports that were written by you and Mr. Simonson were based upon your investigations from the Fall of 1954 until your active investigation had terminated? A. Yes, sir.

Q. And this case is to a certain extent the result of investigation conducted by you and Mr. Simonson? A. Yes, sir.

Q. Did you see the report or reports which Mr. Simonson submitted?

Mr. Bantz: Your Honor, I would object to that anyway as being immaterial whether he saw them or not.

The Court: Yes; I will sustain the objection.

Q. Did you collaborate with Mr. Simonson in

(Testimony of Donald M. Blankenship.)

the creation of his report or reports to his [230] superiors?

A. Well, what he did with it after he transmitted it to them I don't know. We fully discussed items back and forth, yes.

Q. Do you mean you gave him information?

A. Well, information that we gathered jointly, I would say. We did work, oh, I mean on things and discuss things back and forth that we dug up.

Q. Did those reports of you and Mr. Simonson contain facts found by you and Mr. Simonson in your investigation as to income of Mr. Palermo and expenses of Mr. Palermo in the operation of his business during the years '50 through '53?

Mr. Bantz: Just a minute. I would object there, your Honor, unless there is some showing that we are not producing at the time of trial any information as to his income that we have or expenses that we have. Certainly he is going beyond this witness' direct examination on any testimony he could give in this particular case. He is asking now to find out what our testimony is before the man has testified to anything in the trial, if he would be eligible to testify to it.

The Court: I am not sure that I understand Mr. Moore's question. He says: Does your report contain facts? It is hard to see how an investigative agent's report would not contain facts and records or the investigative agent's [231] report of what he had heard or what somebody else has told him or what some witness has testified.

(Testimony of Donald M. Blankenship.)

Mr. Moore: Yes.

The Court: I don't think you are permitted to go that far.

Mr. Moore: I will advise the Court that one of the reasons for asking questions along this line was that I was trying to form the basis at this time in relation to Mr. Simonson's testimony so that we won't have to take it up in the morning.

The Court: Oh, I see. The view that I have taken may be wrong, but I have reached the conclusion, as I told counsel in the Chambers as to the Jenks case, that the defense goes no further, after the witness takes the stand and after it is made to appear that he had made reports concerning the subject matter of his testimony, that they have the right to demand statements that he has made or reports that he has made, but I think also there should be added: If they are requested in good faith for use in the cross-examination of the witness to effect his credibility. Now, in this particular instance I can't believe that the Supreme Court in the Jenks case meant that if the Government puts on an investigative witness and has him testify to the time of day, we will say, or has him testify that he saw the defendant on a certain day, that does not mean that they can turn the witness [232] inside out and get a history of the case and use the reports and say: Here is what we are going to prove and we know exactly what the Government's case is. You cannot get the entire case laid out on the reports of the investigative witness, and if he testifies to

(Testimony of Donald M. Blankenship.)

one thing and one document, then to get the whole Government's case laid out. I don't think that can be done. It must be something that is demanded in good faith and can be used in cross-examination. Here there is nothing to cross-examine on except the admissibility of a few documents that have not yet been offered. Here he has testified as to the documents and what is necessary to file joint returns and what is not, and I can't see that some reports he has made in inter-office communications would be admissible.

Of course, the big problem of the Trial Judges on the benches from time to time and the Appellate Courts is just what the Supreme Court meant and how far they intended to go in the Jenks case. And, of course, they had not agents of the Government but undercover investigators that had been planted by the Government in subversive organizations and Communist organizations, and it was their reports that we are concerned with there. Now, whether that means any Government agent who is employed full time or on a regular basis like the F.B.I. Agents or like an agent in the Internal Revenue Service, if they get on the stand, that they should disgorge [233] all the documents. I don't think you can go that far.

Mr. Moore: Your Honor, I don't want to go that far myself. I was hoping by examining Mr. Blankenship and being aware of what Mr. Simonson is going to testify to tomorrow, I thought we could get this out of the way. I wanted to bring this out.

(Testimony of Donald M. Blankenship.)

The Court: Mr. Simonson is here?

Mr. Bantz: Yes; he is the man sitting behind me here, and Mr. Simonson is an Intelligence Agent who does accounting work in the preparation of these cases. It starts with the Agent that is on the stand and he examines the books and consults with Mr. Simonson and Mr. Simonson takes the case over and it goes from there.

The Court: Yes; I understand that distinction.

Mr. Moore: Maybe we will have to just let it go until Mr. Simonson takes the stand.

The Court: It seems to me that this wasn't just the right witness to try it out on; he hasn't testified to much except documents.

Mr. Moore: I thought we could work it out this afternoon.

Mr. Bantz: Of course, my objection to—your Honor, if I may have a minute here?

The Court: Yes; surely.

Mr. Bantz: As to tomorrow, I am going to put on Mr. [234] Simonson on, who undoubtedly knows much about the case, and I must keep his examination within the bounds of the case. He can't testify as to his summary of the evidence that isn't here in court. You wouldn't allow me for a minute unless it is something within some of the issues that have been admitted, and you are not going to allow me to do it, and so, unless he testifies—I want to state my position today so that Mr. Moore will know it, if he testifies basically 100 per cent on the facts that are here so that the jury is given a summary of

(Testimony of Donald B. Blankenship.)

what went on, certainly it doesn't open the door as to what did you do in 1954 about this case. If I don't cover it on direct examination, I don't think that his files should be open. I am not trying to belittle the motion when they have good cause to make it but I strenuously object unless they show some good cause.

The Court: Of course, the difficulty about passing upon applications for disclosure, I think it is unfair for the Government, because it can't be reciprocal, to make the Government make an undue disclosure during the trial or during the progress of the trial on communications and evidence back and forth as to inter-office communications. Of course, if a witness takes the stand whether he is an expert on evidence or whatever he is, if he has made prior statements or reports that might be inconsistent with his present testimony, that would be useful for the defense obviously in [235] the matter of cross-examination and in the attempted impeachment of the witness. Of course, I think one of the big subjects for discussion and covering quite a bit of the opinion in the Jenks case was whether or not someone else other than the defense counsel should determine whether or not the prior statements were contradictory or inconsistent and the court there said that the United States Attorney and not even the Court can say that these reports or prior statements are not inconsistent, and if the effort is a good faith one and it is an evidentiary matter that they are seeking to get—would be evidentiary in the

(Testimony of Donald B. Blankenship.)

matter of cross-examination, then I think they are entitled to determine whether it would be contradictory. Of course, if the witness has testified on direct examination, the matter of premature disclosure is not present. I don't know how many witnesses you would have after—Mr. Simonson, is it?

Mr. Bantz: Yes; Mr. Simonson.

The Court: I don't know how many witnesses you would have after Mr. Simonson but you have already disclosed what you are going to prove by him, and I can't see where there would be very much detriment or unfairness of his disclosure of the reports. It does not mean that the defense can bring in all the evidence that is contained in Mr. Simonson's reports. I think he has the privilege of looking over it and then by proper cross-examination bring it out. I may not let [236] him use any of it and he has the right to determine whether it is inconsistent and can be used on cross-examination, and then it is finally for the Court to determine whether or not it is proper cross-examination upon proper objection. I suppose you understand that you can't get in everything that he shows in his report.

Mr. Moore: I think, your Honor, we have accomplished this much; I think when Mr. Simonson gets on the stand or Mr. Blankenship testifies further we can make the request without any further argument. We at least have the expression of how the Court is going to rule on it.

The Court: I don't think I want to cut Mr. Bantz off from expressing his views. I think that the De-

Testimony of Donald B. Blankenship.)

Department of Justice has given this considerable consideration. I don't think that it is a new matter as far as the Department of Justice is concerned.

Mr. Bantz: I am going to follow along the lines of what he testifies to; if he testified he has made a prior statement, we will not argue about that. I think we do not want to go beyond what he has testified to.

The Court: I think it should be confined to reports he has made and that are pertinent to the testimony, with the matters concerning which he has testified.

Mr. Bantz: Yes.

Mr. Moore: Yes. [237]

The Court: Where he has testified to reports and where he has got something that has nothing in the world to do with this, I don't think counsel is entitled to that. It must be something that pertains to his testimony on the stand here, and then counsel is entitled and has a right to look it over and see whether prior statements are inconsistent, and I think that is what the court said in the Jenks case.

Mr. Moore: That is the way I understood it. Thank you, your Honor.

Mr. Bantz: Thank you, your Honor.

The Court: The Clerk tells me that you have in mind making photostats of certain of the exhibits here. I think that counsel can arrange among yourselves and with the Clerk to have them taken out and photostated.

(Testimony of Donald B. Blankenship.)

Mr. Moore: By agreement with the Court and counsel I won't cross-examine Mr. Blankenship until the jury gets back.

The Court: All right; the court will adjourn until tomorrow morning at 10:00 o'clock.

July 25, 1957—10:02 A.M.

The Court: All right; proceed.

Mr. Bantz: I think that the record should show that Mr. Blankenship was on the stand last. Mr. Moore says he has no further examination and I have no further examination. [238]

The Court: I see. Yes; he was on the stand when the jury was excused.

Mr. Bantz: Yes. I will call Mr. Nickols.

CECIL NICKOLS

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Will you state your name, please?

A. Cecil Nickols.

Q. Just sit down. You can sit down, Mr. Nickols.

What is it now? A. Cecil Nickols.

Q. And where do you live, Mr. Nickols?

A. White Salmon.

Q. And how long have you resided in that area?

A. Since 1904.

(Testimony of Cecil Nickols.)

Q. Yes; all right. And in what business are you engaged?

A. I am in the fishing business now.

Q. In 1950 to 1953 what business were you engaged in?

A. Sawmill business.

Q. And where was that sawmill business located?

A. In the White Salmon area, West Klickitat County.

Q. Are you familiar with a man named Joe Palermo? [239]

A. Yes; I know him.

Q. Do you know him personally?

A. Yes.

Q. Is he in the court room?

A. Yes.

Q. Will you point him out?

A. He is the second gentleman on the right-hand table.

Q. Mr. Nickols, were you issued a subpoena to bring some records here in court?

A. Yes.

Q. Do you have them with you?

A. Yes.

Q. Let us—may I have them, please? You can just sit there.

The Clerk: Plaintiff's 75 and 76.

Q. Handing you Plaintiff's Exhibit 75 for Identification, Mr. Nickols, these are some items you just handed me. Now, what is that exhibit there?

A. It is a check to Mr. Palermo for stumpage.

Q. All right; is it more than one check?

A. There is three checks here.

Q. What year does it cover?

A. It covers October 13th.

Q. Of what year?

A. 1951.

(Testimony of Cecil Nickols.)

Q. And the other checks, what year do they cover? [240]

A. November 6th, 1951, and November 29th, '51.

Q. And what were these checks for?

A. For stumpage.

Q. All right, and they are all to Mr. Palermo?

A. Yes.

Q. Handing you Exhibit 76 for Identification, those are some items that you just handed me, and state just what those are, please.

A. Well, these are checks for stumpage.

Q. For what year now is that group of checks?

A. For '52.

Q. And are they all to Mr. Palermo?

A. Yes; these are to Mr. Palermo.

Q. Now, is your signature on these checks?

A. They are my wife's.

Q. Do you recognize your wife's signature?

A. Absolutely.

Q. All right; were they in the course of business?

A. Yes; they were in the course of business.

Q. All right. Plaintiff's Exhibit 76 for Identification, what were these checks for?

A. They were for stumpage.

Q. And to Mr. Palermo?

A. Yes, to Mr. Palermo.

Q. Now, Mr. Nickols, do you know if you have any other or [241] additional checks to Mr. Palermo for logs or stumpage?

A. No; I have not.

Testimony of Cecil Nickols.)

Q. You checked your records?

A. I checked my records. I have no more.

Mr. Bantz: I will offer Plaintiff's 75 and 76 in evidence, your Honor.

Mr. Moore: No objection.

The Court: Admitted.

(Whereupon, said groups of checks were admitted in evidence as Plaintiff's Exhibits 75 and 76.)

Mr. Bantz: You may examine.

Cross-Examination

By Mr. Moore:

Q. Were you, you say, in the sawmill business from 1950 to 1953? A. Yes.

Q. And you did business with Mr. Palermo only in 1951 and 1952? A. That's right.

Q. Was the termination of your business relationship the result of some difficulty between the two of you?

A. No. No. I got excessive timber otherwise.

Q. Pardon? [242]

A. I got excessive timber otherwise than Mr. Palermo's timber.

Q. There were no difficulties between you?

A. No. No; our business relationships were fine. There were no difficulties whatever.

Q. Were you in the logging business before 1950?

A. Oh, yes; I have been in the logging business since 1949.

Mr. Moore: That is all.

The Court: Any other questions?

Mr. Bantz: No.

(Witness excused.)

Mr. Bantz: Call Mr. Everett Thoren.

EVERETT THOREN

called and affirmed as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Would you state your name, please?

A. Everett Thoren.

Q. And where do you reside, Mr. Thoren?

A. I am living at Lyle, Washington, now.

Q. What business are you engaged in?

A. In the lumber business.

Q. And what firm is that? [243]

A. We are known as Thoren Lumber Company now.

Q. And are you one of the owners?

A. Yes; I am one of the owners.

Q. Now, are you familiar with the Lyle Lumber Company?

A. Yes; I am familiar with that company.

Q. What connection did you have with the Lyle Lumber Company?

A. We did planing work for them for a number of years, and in 1953 we received the assets of the Lyle Lumber Company into our firm.

(Testimony of Everett Thoren.)

Q. Now, when you received the assets, did you get the books and records of the Lyle Lumber Company?

A. Yes; they gave me everything that was there on the premises.

Q. Including books and records?

A. That's right.

Q. And have you had those books and records under your custody and control since that time?

A. Yes; they are in the boxes ever since that time.

Q. And what is your position with the Thoren Lumber Company at the present time?

A. Well, I am presently the owner and manager.

Q. Now, were you subpoenaed to bring all of the records into court?

A. Yes; I was.

Q. And do you know Mr. Joe Palermo? [244]

A. Yes.

Q. Is he in the courtroom?

A. Yes, he is.

Mr. Bantz: May I have these marked as exhibits, please?

The Clerk: Plaintiff's 77, 78, 79.

Q. Mr. Thoren, handing you Plaintiff's Exhibit 77 for Identification, which is one of the items you just handed me, would you examine that? Now, what do those purport to be?

A. Well, this is a check, a Lyle Lumber Company check made out to Joe Palermo, signed by Fred Ross, in the amount of \$3,600.52.

Q. What is the date of that check?

A. May 18, 1948.

(Testimony of Everett Thoren.)

Q. Now, there is another one there.

A. That is made out to Joe Palermo and the amount is different, and——

The Court: If there is no objection you really should not give the contents of the checks until they have been admitted.

Mr. Bantz: I am sorry. I am just trying to get along.

Q. Did you receive these checks along with the other records of the Lyle Lumber Company?

A. Yes; these are the checks.

Q. And those have been in your custody? [245]

A. They have been in my custody.

The Court: He can state who they are to and what they are for.

Q. Plaintiff's 78 for Identification, will you just state, if you know, what those are?

A. Those are Lyle Lumber Company checks made out to Joe Palermo. May 31, 1949——

Q. Now, are those all for the same year, the checks? A. Yes; they are all for 1949.

Q. What business was the Lyle Lumber Company in?

A. They had a sawmill for manufacturing logs into lumber.

Q. Do you know what these are for?

A. Those are apparently log checks.

Q. Now, handing you Plaintiff's Exhibit 79 for Identification, would you please examine that and would you state what it is?

(Testimony of Everett Thoren.)

A. This is a log ledger showing a summary of the logs purchased by Lyle Lumber Company.

Q. By Lyle Lumber Company? A. Yes.

Q. All right. Now, in that Plaintiff's 79 is there any reference to Joe Palermo?

A. On Page 15 there is—it shows logs, Joe Palermo, April 30th to May 15th.

Q. All right. Now, there are other references in that book [246] that you have also clipped in there, is that right?

A. On Page 20 there is a reference to logs purchased from Joe Palermo for May 16th to the 31st.

Q. I am just wanting to know what was in there. Did you check, Mr. Thoren, whether Exhibits 77 and 78 are also contained in—I mean that the figures and information that details the checks is contained in Exhibit 79 for Identification?

A. I checked some of them.

Q. And how did they compare? Are they included?

A. As near as I can tell for the same amounts.

Q. And what is a book like that called?

A. Well, it says "Record" on here.

Q. Well, you are in the logging or milling business; what is that called?

A. Well, we would call it an account book, log account book.

Q. For logs purchased?

A. Yes, for logs purchased from different loggers, yes.

Q. Did you in your records that you have in

(Testimony of Everett Thoren.)

your possession find any additional matter concerning Joe Palermo, checks or other books or records?

A. I never looked for them.

Q. Those are the years you were asked for?

A. That's right.

Q. When did the Lyle Lumber Company go out of business? [247]

A. We took over the assets of the Lyle Lumber Company, I believe, January 13, 1953.

Mr. Bantz: You may examine.

Cross-Examination

By Mr. Moore:

Q. Did you used to work for the Lyle Lumber Company?

A. We did their milling on a custom milling basis from 1948 for—I believe it was right up until 1950, some time in there.

Q. And your knowledge of Exhibits for Identification 77, 78 and 79 is by reason of having found those matters in your record books?

A. That's right. We never paid too much attention to those records until they were showed to us. In fact, they were all in a box over there, that is the way they were given to us.

Q. And have you done business with Mr. Palermo since you took over the Lyle Lumber Company?

A. Yes. Yes; we have bought logs from Mr. Palermo.

Mr. Moore: I think that is all.

Mr. Bantz: You may be excused.

(Witness excused.)

Mr. Schmid, please. [248]

DAN SCHMID

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Will you state your name, please?

A. Dan Schmid.

Q. And where do you reside, Mr. Schmid?

A. Stevenson, Washington.

Q. In what business are you engaged?

A. At the present time I am working for Hege-
wald Company, that is in Stevenson, Washington.

Q. Mr. Schmid, have you ever been connected
with the Stevenson Plywood Corporation?

A. Yes, sir.

Q. When were you connected with them?

A. I was connected with them from July, 1948,
until April, 1956.

Q. All right. What was your position with that
corporation? A. Office manager.

Q. As officer, manager were you familiar with
the books and records of the Stevenson Plywood
Corporation? A. Yes, sir, I was.

Q. Mr. Schmid, are you familiar, or do you
know a man by the name of Joe Palermo?

(Testimony of Dan Schmid.)

A. I have met Mr. Palermo. [249]

Q. And do you know if the Stevenson Plywood Corporation had any business with him?

A. Yes, they did.

Q. And, now, were you subpoenaed to bring certain books and records with you? A. Yes, sir.

Q. In connection with Joe Palermo?

A. Yes, sir.

Q. And did you bring them with you?

A. Yes.

Q. May I have them, please?

A. It is just this top envelope. These others are empty.

The Clerk: Marking Plaintiff's 80, 81, 82, 83, 84.

Q. Mr. Schmid, handing you Plaintiff's Exhibit 80 for Identification, are these a part of the records now that you brought with you? A. Yes.

Q. In connection with the subpoena?

A. Yes.

Q. Now, would you just tell the jury what are those?

A. Well, these are—this is the detail and the checks for logs that were purchased from Palermo.

Q. And who are they to?

A. Made payable to Mr. Joe Palermo.

The Court: Keep your voice up, please. [250]

A. Made payable to Mr. Joe Palermo.

The Court: Yes, tell the jury so that they can hear.

Q. What years were they concerning?

A. Years 1949 through 1953.

(Testimony of Dan Schmid.)

Q. No, the ones that you have in your hand, Plaintiff's 80, what year are they? A. 1949.

Q. And there are some other sheets besides the checks? A. That is the detail.

Q. The detail is concerned with the checks that they are attached to? A. Yes, that's right.

Q. Did you check during the year 1949, did you check to see if that is all the records you had in connection with Mr. Palermo? A. Yes.

Q. And is that all the records you could find?

A. Yes.

Q. Handing you Plaintiff's Exhibit 81 for Identification, would you please examine that and tell the Court and jury what it is, if you know? As a group, you don't have to go over each one.

A. This represents payment for logs we purchased from Mr. Palermo during the year 1950.

Q. And they are for the Stevenson Plywood Corporation? [251] A. That is correct.

Q. Now, are they all for one year?

A. These are all for one year.

Q. And did you check your records to see if you had any other checks or supporting vouchers concerning the year 1950? A. For Mr. Palermo?

Q. Yes, for Mr. Palermo.

A. I have checked and this is all that I could find, and I am sure that these is all that there were.

Q. And you recognize these checks as being checks on the Stevenson Plywood Corporation?

A. Yes.

Q. And what are the checks for?

(Testimony of Dan Schmid.)

A. They were for logs purchased from Mr. Palermo.

Mr. Bantz: I will offer Identification No. 81 in evidence, Your Honor.

Mr. Moore: No objection.

The Court: Admitted.

(Whereupon, said group of checks were admitted in evidence as Plaintiff's Exhibit No. 81.)

Q. Handing you Plaintiff's Exhibit 82 for Identification, would you please examine that [252] exhibit? A. Yes.

Q. All right, now, for what year is Plaintiff's Exhibit 82 for Identification concerned with?

A. For the year 1951.

Q. And who are the checks made payable to?

A. Mr. Joe Palermo.

Q. And would your testimony as to Plaintiff's 82 be the same as the one you have just testified for the year 1950, which is Plaintiff's Exhibit 81?

A. Yes.

Q. You recognize all these and recognize what these matters are? A. Yes, I do.

Mr. Bantz: I will offer Plaintiff's 82 in evidence, Your Honor.

Mr. Moore: No objection.

The Court: Admitted.

(Whereupon, said group of checks was admitted in evidence as Plaintiff's Exhibit No. 82.)

(Testimony of Dan Schmid.)

Q. Handing you Plaintiff's Exhibit 83 for Identification, would you please examine that exhibit?

A. Yes.

Q. That is part of the records you brought with you this [253] morning? A. Yes, sir.

Q. And what year is that exhibit concerned with? A. 1952.

Q. Did you check the records to see if there was any other checks or supporting vouchers concerning Joe Palermo for the year 1952 with the Stevenson Plywood Corporation? A. I did.

Q. Could you find any additional ones?

A. No.

Q. And would your testimony as to Plaintiff's 83 concerning the year 1952 be the same for the years 1950 and 1951 which you have just testified about? A. Yes.

Q. Now, handing you Plaintiff's Identification 84, what is that?

A. That covers the year 1953.

Q. Are those from your corporation?

A. Yes.

Q. Do you recognize them? A. Yes.

Q. And who are they made payable to?

A. Mr. Joe Palermo.

Q. And would your testimony, concerning 1953, concerning Plaintiff's 84 be the same as it was concerning Plaintiff's [254] 83, concerning 1952?

A. Yes.

Q. Did you find any additional checks made payable to Mr. Joe Palermo during the year 1953?

(Testimony of Dan Schmid.)

A. No.

Mr. Bantz: I will offer Plaintiff's 83 and 84, Your Honor.

Mr. Moore: No objection, Your Honor.

The Court: Admitted.

(Whereupon, said documents were admitted in evidence as Plaintiff's Exhibit Nos. 83 and 84.)

Q. Mr. Schmid, discussing or referring now to the Plaintiff's Exhibits 81, 82, 83, and 84, which I just handed to you and you identified, would you please state what all of those checks in there were payable to Mr. Palermo for?

A. For logs that were purchased from Mr. Palermo.

Q. Now, did your company do any other type business with Mr. Palermo? A. No.

Mr. Bantz: You may examine.

Cross-Examination

By Mr. Moore:

Q. How was delivery of the checks to Mr. Palermo effected? [255]

A. I can't tell you. Some loggers picked their checks up and others were mailed out. We had as many as 200 loggers in there at the time.

Q. I beg your pardon?

A. We had as many as 200 loggers in there in different years.

Mr. Moore: That is all.

Mr. Bantz: You may be excused.

(Witness excused.)

Mr. Bantz: Your Honor, at this time I would like to request about fifteen to twenty minutes recess for us. The next witness is Mr. Paul Simonson and I have to have him examine some of the records that have just been put in this morning so that he can testify to them. I want to have the witness check them before we continue and if you would not object it would save us time.

The Court: I will just recess subject to call, if you will let me know.

(Whereupon, after recess the following proceedings occurred:)

PAUL SIMONSON

called and sworn as a witness on behalf of the Government, was examined and testified as follows:

Direct Examination

By Mr. Bantz:

Q. Now, will you state your name, please? [256]

A. Paul Simonson.

Q. And where do you live, Mr. Simonson?

A. Yakima, Washington.

Q. And how long have you lived here?

A. Since 1954.

Q. Now, what position are you occupied with at the present time?

(Testimony of Paul Simonson.)

A. I am a Special Agent with the Internal Revenue Service.

Q. And how long have you been with the Internal Revenue Service?

A. Since September, 1948.

Q. And what does a Special Agent with the Internal Revenue Service do; what are your duties?

A. One of our duties is to make income tax investigations where fraud is alleged.

Q. Now, where did you go to college, Mr. Simonson?

A. Michigan State College and Seattle University.

Q. And what subjects—what did you major in at school? A. Accounting.

Q. And are you an accountant?

A. Yes, sir, I am.

Q. And have you passed the Certified Public Accountant's Examination? A. I have.

Q. And when did you become a C. P. A.? [257]

A. In 1950.

Q. And you are still an active C. P. A.?

A. I am not in active practice.

Q. No. I mean you are still a licensed C. P. A.?

A. Yes.

Q. Mr. Simonson, are you familiar with the case of United States vs. Joe Palermo?

A. Yes, I am.

Q. And what position did you have in relation to that case?

(Testimony of Paul Simonson.)

A. I was a Special Agent for the Internal Revenue Service investigating Joe Palermo.

Q. Now, do you recall when you were first assigned to this case? A. December 14, 1954.

Q. And were you then a resident of Seattle or here?

A. I was a resident of Yakima at that time.

Q. And where were you employed by the Internal Revenue prior to your tour at Yakima?

A. At Seattle, Washington.

Q. What were you doing at Seattle?

A. I was a Special Agent in Seattle.

Q. Have you always been a Special Agent with the Internal Revenue? A. I have, yes.

Q. Now, do you know Mr. Joe Palermo? [258]

A. I do.

Q. You have met him, have you?

A. Yes, I have.

Q. You conducted your portion of the investigation of this case, I take it? A. I did, yes.

Q. Now, did you have, that is in the past did you have a meeting with Mr. Palermo in which you inspected any records of any kind?

A. Yes, I did.

Q. When was that, and where was that?

A. The first meeting I had with Mr. Palermo was December 28th, 1954, at Goldendale, Washington, in the Internal Revenue office there.

Q. And who was present at that meeting?

A. Mrs. Palermo, Mr. Palermo, Mr. Moore, Mr. Brown. Mr. Blankenship and myself.

(Testimony of Paul Simonson.)

Q. Now, did you inspect any records of Mr. Palermo at that time?

A. We looked at his books. He had them present.

Q. What do you mean by books?

A. The books where he recorded his receipts from the logging business and other information included in his books.

Q. And what years were involved that you were looking at, at that time? [259]

A. I don't recall what the years were we had at that particular meeting but we did have his books covering at least a portion of the years we were checking.

Q. Now, did you have any other occasion to examine the books and records of Mr. Palermo?

A. I did, yes, sir.

Q. Where and when was that?

A. I examined the books in Mr. Moore's office here at Yakima, during the year 1955 and about in June, 1955, there was several days in June I examined those books and later I recall I did not have 1948 books which he did not have there at one time but he did bring those up and I examined those later.

Q. Now, you have then examined the books and records from the year 1948 through the indictment years of 1950, through 1953? A. I have.

Q. And did you make yourself a schedule at that time of what was included in the books and records?

A. No, I did not. Mr. Moore furnished Mr.

(Testimony of Paul Simonson.)

Blankenship with photostats of the records so far as gross receipts are concerned and I examined the books in Mr. Moore's office.

Q. Now, have you examined the photostatic copies of books and records given to Mr. Blankenship? A. I have. [260]

Q. And those are the photostats—some of those photostats are now in evidence, is that correct?

A. That is correct.

Q. Do you have in your possession one of those photostats that was given to you?

A. There is one that was given for the year 1948.

Q. And do you have that with you?

A. No, I don't have that with me.

Q. Or do I have that?

A. I don't have it. You have it.

Q. I have it? A. Yes.

Mr. Bantz: Would you mark this for identification?

The Clerk: Plaintiff's 85.

Q. Mr. Simonson, handing you Plaintiff's 85, would you examine that and tell me if you have seen it before and when?

A. I have, and this is a photostat of a record which was given to me by Mr. Moore.

Q. When did you receive it?

A. On September 14th, 1955.

Q. What is it alleged to be, or purported to be?

A. It is a record for receipts for 1948 for Joe Palermo and also includes receipts for '47.

Q. Mr. Simonson, have you had a chance to ex-

(Testimony of Paul Simonson.)

amine the books [261] and records of Mr. Palermo as to the year of 1950? A. Yes, I have.

Q. And you did that through your meetings with him and the exhibits that are now in evidence?

A. Yes.

Q. Did you have a chance to examine the bank records involving the deposits of Mr. Palermo in the National Bank of Commerce at White Salmon?

A. Yes, I did.

Q. And when was that?

A. We examined the deposits in the National Bank of Commerce on March 9th and 10th of 1955.

Q. And are those bank deposit ledgers in evidence now? A. They are.

Q. And have you examined them?

A. Yes, I have.

Q. They are one and the same? A. Yes.

Q. Did you have an opportunity to examine the records of the bank in Stevenson for the year of 1950? A. I did.

Q. And do you recall when that was?

A. It was about March 10th or 11th or in that period of time.

Q. And are those records in evidence now?

A. Yes, they are. [262]

Mr. Bantz: May I have Plaintiff's Exhibits 26 through 30, please, Mr. Taylor. May I have Exhibits 71 through 74?

Q. Mr. Simonson, handing you Plaintiff's Exhibit 71, have you seen that before?

A. Yes, I have.

(Testimony of Paul Simonson.)

Q. And what is that now?

A. That is a photostatic copy of Joe Palermo's receipts for the year 1951.

Q. For 1951?

A. I mean—I am sorry, I mean 1950.

The Court: What number is that?

Mr. Bantz: That is Plaintiff's Exhibit 71, Your Honor.

The Court: All right.

Q. Now, handing you Plaintiff's Exhibit 27 for Identification, have you had an opportunity to examine that exhibit? A. Yes, I have.

Mr. Bantz: And, Mr. Taylor, would you clip that in there, that loose piece of paper?

Q. Have you had a chance to examine this Plaintiff's exhibit? A. Yes, I have.

Q. And have you checked that exhibit for identification in connection with Plaintiff's Exhibit 71 that you have in your hand? A. Yes, I have.

Mr. Bantz: All right. May I have, Mr. Taylor, plaintiff's [263] Exhibits 3, 4, 5, and 6.

Q. Now, handing you Plaintiff's Exhibit 3, which is the 1950 income tax return of Mr. Palermo, will you just look at that again. Have you had a chance to examine that previously?

A. Yes, I have.

Q. Now, Mr. Simonson, have you ever checked the figures on Plaintiff's Exhibit 71 and Plaintiff's Exhibit 27 for Identification and Plaintiff's Exhibit 3, which is the 1950 income tax return of Mr. Palermo, against each other?

(Testimony of Paul Simonson.)

A. Yes, I have.

Q. Just tell me what is the relationship of Plaintiff's Exhibit 27 for Identification to 71 and 3 that have been admitted?

Mr. Moore: Your Honor, I don't think that is proper examination for the witness to tell or testify as to the contents of an identification that——

Mr. Bantz: I am trying to get it admitted on the relationship, that is what I am trying to do.

The Court: I think what counsel is asking him, as an accounting expert what from the standpoint of accounting and record keeping is the relation between them. Is that it?

Mr. Bantz: Yes; that is right.

Mr. Moore: I thought he was going to testify as to accounting. [264]

The Court: The relationship between them.

Mr. Bantz: Yes, the relationship between them.

A. The Exhibit 27 is work papers of R. J. Bates used in the preparation of the income tax return which is Plaintiff's Exhibit 3.

Q. And what is the relation of 71 to 27 for Identification?

A. Exhibit 71 is Mr. Palermo's receipt record which were the figures which were obtained to be put on Exhibit 27 being the work papers and also Exhibit 3.

Q. Do the work papers and Exhibit 71 for all practical purposes have the same figures?

A. The total of the receipts of 71 agree on the work papers and on the income tax return.

(Testimony of Paul Simonson.)

Mr. Bantz: Now, Your Honor, at this time I am going to offer Plaintiff's Exhibit 27 for Identification, which was identified by Mr. Bates previously.

Mr. Moore: Now, Your Honor, I frankly don't believe that Plaintiff's Exhibit 27 for Identification has been properly identified. The witness has testified that these are the work papers of Mr. Bates but I don't think that we know that they are all work papers that were used by Mr. Bates because Mr. Bates couldn't tell us, nor could his son. The papers to all intents and purposes have only been identified as being papers upon which the year 1950 was written and which Mr. Bates' son said contained his father's handwriting [265] and somebody else's handwriting.

The Court: Is that the year 1950?

Mr. Moore: Yes, 1950, Your Honor.

The Court: That is 27, do you mean?

Mr. Bantz: Yes, 27 for Identification for the year 1950.

The Court: Well, I think that that should be admitted. I think they have been sufficiently identified, that is not all of them, and that is subject to rebuttal or explanation.

Mr. Bantz: Thank you, Your Honor.

Q. Would you please examine Plaintiff's Exhibit 4, which is the income tax return of 1951 for Joe Palermo. Have you reviewed that before, Mr. Simonson?

A. Yes, I have.

Q. And you are familiar with it?

A. Yes, I am familiar with it.

(Testimony of Paul Simonson.)

Q. Now, Mr. Simonson, handing you Plaintiff's Exhibit 72, have you seen that before?

A. Yes, I have.

Q. And have you reviewed it before?

A. Yes, I have.

Q. And just what is Plaintiff's Exhibit 72?

A. That is the receipt record—that is photostatic copy of Mr. Joe Palermo's receipt record for 1951.

Q. And where did you receive that?

A. That was received from Mr. Moore. [266]

Q. Now, checking Plaintiff's Exhibit 72 against Plaintiff's 4, can you look and tell whether the figures on Plaintiff's Exhibit 72 appear on Plaintiff's Exhibit 4 as to income?

A. The amounts recorded on Plaintiff's Exhibit 72, the total of those amounts agree with the total shown on Exhibit 4, the income tax return.

Q. For the same year?

A. For the same year.

Q. All right. Now, handing you Plaintiff's Exhibit 28 for Identification, will you examine that please. Now, have you seen that exhibit before?

A. Yes, I have.

Q. And have you reviewed that exhibit before?

A. Yes, I have.

Q. Now, have you had an opportunity to compare Plaintiff's Exhibit 28 for Identification with Plaintiff's Exhibit 72 and Plaintiff's Exhibit 4?

A. Yes, I have.

Q. What is the general comparison between

Testimony of Paul Simonson.)

Plaintiff's Exhibit 28 for Identification and Plaintiff's Exhibits 4 and 72?

A. The total of the figures on Exhibit 72 agrees with the total shown on Exhibit 28 and on Exhibit 2, the income tax return. The totals are all the same for gross receipts.

Mr. Bantz: Your Honor, I am going to offer Plaintiff's [267] Exhibit 28 for Identification that was previously identified by Mr. Bates.

Mr. Moore: Same objection, Your Honor, improperly identified.

The Court: All right, it will be admitted.

(Whereupon, said documents were admitted in evidence as Plaintiff's Exhibits Nos. 27 and 28.)

Q. Handing you Plaintiff's Exhibit 5, will you please examine the exhibit? What is it and have you seen it before?

A. This is income tax return of Joe Palermo and Bertha Palermo for the year 1952, and I have seen it before.

Q. And have you reviewed it previously?

A. Yes, I have.

Q. Handing you Plaintiff's Exhibit 73, have you seen that Exhibit? A. Yes, I have.

Q. What is that Exhibit?

A. That is photostatic copy of receipt record of Joe Palermo for the year 1952.

Q. And where did we receive Plaintiff's Exhibit 73? A. From Mr. Moore.

(Testimony of Paul Simonson.)

Q. And that alleges to be the receipts for the year 1952? A. Yes, sir. [268]

Q. Handing you Plaintiff's Exhibit 29 for Identification, would you please examine Exhibit 29. Have you seen Plaintiff's Exhibit 29 for Identification before, Mr. Simonson?

A. Yes, I have.

Q. Have you had an opportunity to examine Plaintiff's Exhibit 29 for Identification along with Plaintiff's Exhibit 73 and Plaintiff's Exhibit 5?

A. I have.

Q. And how does Plaintiff's Exhibit—Is that 28? A. 29.

Q. 29 compare with Plaintiff's Exhibit 73 and Plaintiff's Exhibit 5?

A. The gross receipts figure on all these three are exactly the same.

Q. And are all for the same year?

A. Yes, all for the same year.

Q. And all for Mr. Palermo?

A. Yes, all for Mr. Palermo.

Mr. Bantz: Your Honor, at this time I will offer in evidence Plaintiff's Exhibit 29.

Mr. Moore: Same objection, insufficient identification.

The Court: Admitted. That is for the year 1952?

Mr. Bantz: That is for the year 1952.

(Whereupon, said document was [269] admitted in evidence as Plaintiff's Exhibit No. 29.)

(Testimony of Paul Simonson.)

Q. Mr. Simonson, handing you Plaintiff's Exhibit 6, will you please see if you have seen it before and state what it is and if you are familiar with it?

A. This is income tax return for the year 1953 of Joe and Bertha Palermo. I have seen it before and I have had a chance to look it over.

Q. Handing you Plaintiff's Exhibit 74, will you please examine that and state what it is?

A. This is photostatic copy of receipts record of Joe Palermo for the year 1953.

Q. And where did you see that previously?

A. Well——

Q. Or where did you get it?

A. Mr. Moore gave it to us.

Q. To you or Mr. Blankenship?

A. Yes, to Mr. Blankenship.

Q. Were you present at that time?

A. No, I wasn't.

Q. Have you had an opportunity to review it while it has been in evidence? A. Yes.

Q. Handing you Plaintiff's Exhibit 30 for Identification, have you seen Plaintiff's Exhibit 30 for Identification [270] before? A. Yes.

Q. And have you had a chance to check it over?

A. Yes, I have.

Q. Now, Mr. Simonson, have you had an opportunity to examine Plaintiff's Exhibit 30 for Identification in connection with Plaintiff's Exhibit 74 and Plaintiff's Exhibit 6? A. Yes, I have.

(Testimony of Paul Simonson.)

Q. And how does the Plaintiff's Exhibit 30 for Identification compare with Plaintiff's Exhibits 6 and 74?

A. The figure for gross receipts on Exhibits 30 and 74 is exactly the same. However, on the income tax return, Exhibit 6, where Exhibits 30 and 74 show seventy-three cents at the end of gross receipts, Exhibit 6 shows seventy-two cents.

Q. In other words, on Plaintiff's Exhibit 6 it reads \$102,901.72? A. Yes.

Q. And what does it read then on Plaintiff's Exhibit 30? A. \$102,901.73.

Q. Does it appear to be the same item?

A. Yes.

Mr. Bantz: Your Honor, I offer Identification 30 in evidence.

Mr. Moore: Same objection, insufficient identification.

Mr. Bantz: Your Honor, I offer it in [271] evidence.

The Court: Will counsel step up to the bench with the exhibit.

(Whereupon, the following proceedings occurred at bench.)

The Court: This is supposed to be Bates' work sheet?

Mr. Bantz: That is what he testified he got from Palermo.

The Court: Oh, I see.

(Testimony of Paul Simonson.)

Mr. Bantz: And here are his books and records.

Mr. Moore: He couldn't even see.

The Court: The boy testified that it wasn't even in his father's handwriting.

Mr. Bantz: He testified that he got the papers that he wrote up the income tax from Palermo and that the figure on here coincides with the figure on the income tax return.

The Court: I think that he testified that this 1953 was his handwriting.

Mr. Bantz: Yes.

The Court: He seemed to be able to see better with his glasses off. The reason I was doubtful about it, the boy didn't identify it.

Mr. Bantz: But he did, the father. He testified that he received '53 from Joe Palermo.

The Court: Yes, all right. It will be admitted.

(Whereupon, the following proceeding occurred in open court.)

The Court: It will be admitted. 30 [272]

(Whereupon, said document was admitted in evidence as Plaintiff's Exhibit No. 30.)

Q. Mr. Simonson, handing you Plaintiff's Exhibit 85, will you state if you have seen that before?

A. Yes, I have.

Q. And what is that?

A. That is a photostat of a receipt record for the year 1948, and including 1947, of Joe Palermo.

(Testimony of Paul Simonson.)

Q. All right, handing you Plaintiff's Exhibit 2, have you examined Plaintiff's Exhibit 2 before?

A. Yes, I have.

Q. And what is Plaintiff's Exhibit 2?

A. Plaintiff's Exhibit 2 is an income tax return for the year 1949, of Joe and Bertha Palermo.

Q. And handing you Plaintiff's Exhibit 26 for Identification, have you had an opportunity to examine that? A. Yes, I have.

Q. And what—

A. These are work sheets—

Q. No, just a minute. Have you had an opportunity to compare Plaintiff's Exhibit 26 in connection with Plaintiff's Exhibits 2 and 85?

Mr. Bantz: Excuse me, just a moment, Your Honor.

The Court: Yes. [273]

Mr. Bantz: May I have Plaintiff's Exhibit 70. I got the wrong one.

Q. Handing you Plaintiff's Exhibit 70, have you seen that exhibit before? A. Yes, I have.

Q. And what is that exhibit?

A. That is photostatic copy of Joe Palermo's receipts record for the year 1949.

Q. Now, have you had a chance to compare Plaintiff's Exhibit 70. Plaintiff's Exhibit 2 and Plaintiff's Exhibit for Identification No. 26?

A. Yes, I have.

Q. And what is the comparison?

A. The total receipts—the total figure for receipts shown on each one of those is the same, the total.

(Testimony of Paul Simonson.)

Q. Now, Plaintiff's Exhibit 70 was the receipts of Palermo? A. For the year 1949.

Q. They match the others? A. Yes.

Mr. Bantz: Your Honor, at this time I would like to offer in evidence Plaintiff's 26 which is for the year 1949, not for the purpose of the indictment but to show the general trend and scheme of handling books on prior years and with that limited understanding.

Mr. Moore: Your Honor, I don't think——

The Court: I [274] will ask the jury to step out for a moment.

(Whereupon, the following proceedings occurred in the absence of the jury.)

Mr. Bantz: I just want to put in evidence for the year 1949 to show that there were similar acts or transactions for prior years, and in this particular case he handled it with Mr. Bates the same way that he handled it in 1950, 1951, '52 and '53. We would show the same in 1949.

The Court: You propose to show understatement of income tax for the year 1949?

Mr. Bantz: I do, yes.

The Court: Are you going back of that?

Mr. Bantz: Well, I have 1948 but I don't have the work sheets of Mr. Bates, and I don't propose to go back of that for that reason. I waited until I got all of the evidence in here and there is some indication that I could get some in but I think, your Honor, I am going to stay within 1949 for that particular item.

(Testimony of Paul Simonson.)

The Court: You said you were going to use net worth at present. Actually you used both of them, net receipts for these particular items not included in the returns and the net worth, too, is that it?

Mr. Bantz: Well, I will state that, Your Honor, the net worth used we are going to assume that the net worth which [275] defendant made up doesn't vary much from being correct, and it is in the files and we have an affidavit——

The Court: You are going to have that?

Mr. Bantz: Well, it is offered to us by his attorney under power of attorney and we have it. And I might make an offer of proof as to what may be testified to at this time and that is that our accountants will agree that it is correct, that is in all major phases of it. There may be a dollar or two difference.

The Court: The point I was getting at: When was the beginning of the net worth computations?

Mr. Bantz: We are going to have to go into 1948 a little bit to make this work.

The Court: The reason I was asking that—I will ask Mr. Moore. The reason that I asked, the Government can't start on the first day of the indictment. They are permitted to go back a reasonable time and a reasonable time is considered to be a number of years, and carry it down. Of course, that wouldn't permit the introduction after the beginning date of the net worth computations. It wouldn't permit the introduction of net worth receipts and disbursements. I don't think it would

(Testimony of Paul Simonson.)

make admissible the prior income tax returns for prior years. However, if you claim that there was a similar method of operation and that there was understatement in prior years, then the prior years become [276] admissible for the purpose of bearing on the intent or wilfulness or guilty knowledge, and I think that that is the way that courts have instructed when it has been in the income tax cases. It was in the Bales case and it was affirmed by the Circuit Court of Appeals. I think that can be used. What is your position, Mr. Moore?

Mr. Moore: Well, first of all, I again must urge that Plaintiff's 26 has not been properly identified, that Mr. Simonson has added only that he looked at three sheets of paper and he advised that the gross—what appears to be the gross is the same.

The Court: Do you still claim that as to 26 that Mr. Bates, Senior, said he got that from Mr. Joe Palermo?

Mr. Bantz: Yes, I do.

The Court: I don't know whether it shows that.

Mr. Moore: I don't think that Mr. Bates, Senior, said anything more than: "There's some papers and I can't read them." And he testified generally that Mr. Palermo brought some papers to him for his use in preparing Mr. Palermo's tax returns, but I don't think that he ever testified that 26 for identification were the papers that Mr. Palermo brought or that they were the papers that he used to prepare Mr. Palermo's tax returns, any more than he did the rest of these.

(Testimony of Paul Simonson.)

Mr. Bantz: Well, I think he said that it was taken down from the discussion with Mr. Palermo, so that they were his [277] notes. Now, I am not saying that they can't cross-examine but as to the gross income he testified that he got that information from Mr. Palermo's receipts, from the papers he received from Mr. Palermo and if he did not get the papers he wrote it down from what was said, and certainly you can't get any more positive identification. That was information from Mr. Palermo and certainly you can't get anything more positive than that.

Mr. Moore: May I say one word?

The Court: Yes.

Mr. Moore: I think that the identification of these papers, Plaintiff's 27, 28, 29, and 30 is similar to having his son get on the stand and look at those papers and say: "That is my father's handwriting," and fold them up and seal them, because Mr. Bates didn't see them.

The Court: His eyesight wasn't that bad. The figures were his figures although he wasn't able to identify it entirely. Wasn't he the witness who took his glasses off?

Mr. Bantz: No, there was another witness that took his glasses off.

The Court: If I remember right, he did look and say: "'53 is my handwriting."

Mr. Moore: Then, I can make one more objection and I will be through.

(Testimony of Paul Simonson.)

The Court: Yes. [278]

Mr. Moore: The Government contends that they intend to introduce all of these for the purpose of proving a pattern which is another statement for showing intent. As I remember the cases, Your Honor, the cases require with reference to the proof of intent there must not merely be understatement of income tax nor must there be understatement of income for one year but there must be a consistent pattern, and when they say consistent pattern I think they mean exactly what they say, that there must be some consistent pattern to the under reporting, and I see that there is nothing here to show that with the prior year and the years of '50, '51, '52, and '53 there is a consistent pattern.

Mr. Bantz: Of course, Your Honor, we are going to be out of court if we can't show that there is a pattern from 1948 to 1953 in withholding checks and not putting them on his books, and that is what he was doing. We are showing net worth all along because they came up with net worth and it substantiates our position, but we are certainly going to prove that in 1948 there were checks that weren't recorded, and that he didn't turn into his income tax returns and were not in the books there and that is what I am trying to show here.

The Court: Well, I don't think that the pattern has to be an elaborate pattern.

Mr. Bantz: No. [279]

The Court: And, of course, the Government can't prove all of its case at one time. They have

(Testimony of Paul Simonson.)

to start somewhere with these documents, and if you propose what you are going to show I am going to admit the evidence, and if you don't follow it out the best I can do is grant a motion to strike it and the jury disregard it. I think if you can state what you propose that you should be permitted to show that. As I understand it, you are not going beyond this at this time?

Mr. Bantz: Well, we got some checks and we are going on only to prove one matter on it, and we are going to prove what was identified and what can be identified by the witness on the stand, and I am going to stay right here in the courtroom and I am not going to get out of here and not show any other previous time.

The Court: If you wish, Mr. Moore, the record may show that you object to all of this as prior to the indictment time.

Mr. Moore: Yes, I think I better get up and object.

The Court: Yes. By showing the prior transactions in prior years the record may show your objection without your repeating it each time a question is asked. All right, if you will bring in the jury.

(Whereupon, the following proceedings occurred in the presence of the jury.) [280]

The Court: Now, ladies and gentlemen of the jury, there has been offered here, as you recall before you were sent out to the jury room, there was

(Testimony of Paul Simonson.)

offered some documents which pertained to the calendar tax year of 1949. I call your attention to the fact that the four counts of the indictment cover the tax years which are the calendar years of 1950 through 1953, inclusive. Now, those are the only years on which the defendant is charged in this indictment with attempting to evade income tax by making false and fraudulent returns. The evidence that is offered is for the year 1949, the prior year, the year prior to the first year in the indictment which is only offered for the limited purpose, and that is the United States Attorney is endeavoring to show that there was not only understatement of income tax for the prior year 1949, but that it was in accordance with the same plan and scheme for other years, and by that evidence he hopes to give some consideration of the intent as far as the guilty knowledge when it was made for the prior year. Now, it is only for the purpose of bearing on the wilfulness, as I will define that to you in my instructions, and it is not any evidence that he committed the offenses charged in the indictment. It only goes to the intent. All right, you may proceed.

Mr. Bantz: I will offer 26 into evidence.

The Court: It will be admitted now. Which one did [281] you offer now?

Mr. Bantz: 26.

The Court: 70 is not in yet, according to my notes.

Mr. Bantz: Yes, that's right. And I am going to

(Testimony of Paul Simonson.)

offer, well, I have already made an offer on 2 and 70, Your Honor.

The Court: Well, let me see, 26 will be admitted. You offered that, didn't you?

Mr. Bantz: Yes.

The Court: And then 2?

Mr. Bantz: Yes.

The Court: And 2 will be admitted and 70. The record will show the objections.

(Whereupon, said documents were admitted in evidence as Plaintiff's Exhibits Nos. 26, 2, and 70.)

Mr. Bantz: May I have 66 and 67.

Q. Mr. Simonson, did you have an opportunity to check the records of Mr. Zunke as to the checks he put in evidence or that he testified about?

A. Yes, I have.

Mr. Bantz: Now, Mr. Taylor, let me have Exhibits 12 and 16, would you.

The Court: Both in evidence?

Mr. Bantz: They are, Your Honor. [282]

Q. Handing you Plaintiff's Exhibit 12 and Plaintiff's Exhibit 16, Mr. Simonson, have you had the chance to review those previously?

A. I have.

Q. And have you examined them as to the deposits of Mr. Zunke? A. Yes, I have.

Q. Did you examine the books of Mr. Palermo for the year of 1950 to see if he had recorded the money he received from Mr. Zunke?

(Testimony of Paul Simonson.)

A. I did.

Q. And what did those books and records show?

A. Mr. Zunke testified that three deposits, one dated June 29, 1950, for \$753.46, one dated September 27, 1950, for \$789.37, and one dated November 16th, 1950, in the amount of \$1677.32 were paid to Joe Palermo for logs. I compared those payments and deposits with the record book in Exhibit 71 and none of those three payments were recorded on the books of Joe Palermo.

Q. Mr. Simonson, were the deposits that we are talking about there, or the checks that we are talking about there deposited in the bank?

A. They were.

Q. And what bank were they deposited in?

A. Check for \$753.46 was deposited in the Bank of Stevenson, [283] and the other two checks were deposited at the National Bank of Commerce or Security State Bank at that time in White Salmon.

Mr. Bantz: May counsel approach the bench, Your Honor, for a moment?

The Court: Yes, all right.

(Whereupon, the following proceedings occurred at the bench, away from hearing of the jury.)

Mr. Bantz: Your Honor, I am sorry I didn't take this up at the time the jury was out. We are going to go down through each of these fellows that have testified and put in the present compiled list, Your Honor. I don't want to identify these sep-

(Testimony of Paul Simonson.)

arately if I can avoid it. I am willing to do it, and they are separate items. Can I wait and have a discussion about it and clip them together and offer them as one exhibit and show the compilation?

The Court: Is this the accounting summary?

Mr. Bantz: This is my copy of the summary.

The Court: Made by the witness?

Mr. Bantz: Yes.

The Court: That is evidentiary material?

Mr. Bantz: Yes, that is.

The Court: If Mr. Moore has no objection, certainly I haven't.

Mr. Bantz: I just want to be sure, and I will go over [284] each one.

The Court: Your point is that it would be less confusing if they were all together instead of having separate sheets?

Mr. Bantz: This is what is testified to, I mean this is a total summary of these here.

The Court: This is a recapitulation?

Mr. Bantz: That is right.

The Court: Oh, I see. Well, I have no objection. Of course, counsel should be given an opportunity to object in detail if he wants to.

Mr. Moore: When he introduces it.

The Court: Yes, when he introduces it, of course.

(Whereupon, the following proceedings occurred in open court before the jury.)

Q. Now, Mr. Simonson, did you for the year

(Testimony of Paul Simonson.)

1950 examine the books and records of Mr. Palermo as to receipts from Mr. Ackley of Bingen, Washington? A. I did.

Q. And did you compare them—or check the deposit slips in the bank or the ledger sheets in the bank with the checks paid to Mr. Palermo by Mr. Ackley? A. Yes, I did.

Q. Now, did you check and see what checks were recorded or the record of checks recorded in the books and records of [285] Mr. Palermo from Mr. Ackley in the year 1950? A. Yes, I did.

Q. And how many checks were there recorded in the books? A. Eleven checks.

Q. And were there any checks not recorded in his books and records?

A. There was a check of April 20, 1950, in the amount of \$1,593.71 not recorded on the books. There was a check as of June 20, 1950, in the amount of \$3,475.14 not recorded on the books. There was a check dated December 5th, 1950, for \$516.40, which was recorded on the book. On August 7th, 1950, Mr. Palermo—Mr. Ackley's check in the amount of \$2,612.10 was received by Mr. Palermo and he recorded it on his book at approximately of that date, received from Mr. Ackley \$2,471.10 or \$141.00 less than the actual check. The total there is \$5,726.25 which I did not find recorded on the book.

Q. All right, were the checks which you have

(Testimony of Paul Simonson.)

discussed previously for the year 1950 received from Mr. Ackley by Mr. Palermo deposited in the bank? A. Yes, they were.

Q. And which bank were they deposited in?

A. They were deposited either at the National Bank of Commerce, White Salmon, or the Bank of Stevenson.

Q. Now, Mr. Simonson, did you have an opportunity to examine [286] the records of Mr. Palermo, his books and records as to receipts he received for the year 1950 from Stevenson Plywood Corporation? A. Yes, I did.

Q. Now, would you just state what checks were recorded in the books and records of Mr. Palermo from Stevenson Plywood Corporation, and what checks were not recorded in the books and records?

A. I found fifteen payments recorded in the book. I found April 10, 1950, there is a check for \$465.08 not recorded on the book. On July 10th, 1950, there was a payment—

Q. Just a moment, I am asking you about Stevenson Plywood Corporation. I shifted one sheet, I am sorry. Stevenson Plywood Corporation, would you let me know how many checks were recorded in his books and records and how many were not recorded?

A. There were five checks recorded, and on July—August 31, 1950, there was a check in the amount of \$2,612.63 not recorded on the book, and a check of October 31, 1950, for \$739.12 not recorded

(Testimony of Paul Simonson.)

on the book, a total of \$3,351.75 not recorded on the books.

Q. How much was recorded on the books?

A. \$8,361.49.

Q. And were the checks deposited at the bank?

A. Yes, they were. [287]

Q. All right, now, referring to the receipts of Mr. Palermo for the year 1950, in connection with the McCormick Lumber Company. Did you have an opportunity to review the receipts given to Mr. Palermo from McCormick Lumber Company against his books and records, did you have that opportunity?

A. Yes, I did.

Q. Now, did you find any of the checks recorded in the books?

A. Yes, I did.

Q. And, all right, did you find any not recorded on the books?

A. Yes, I did.

Q. And did you find the checks deposited in the bank?

A. They were all in the year 1951, except for one payment indicated on the McCormick record for \$19.71, they were all deposited to the National Bank of Commerce at White Salmon or the Bank of Stevenson.

Q. You are talking about the year 1950?

A. Yes, the year 1950.

Q. Now, how many checks were recorded in his books and records from McCormick?

A. There were fifteen payments recorded in the books and records from McCormick Lumber Company.

(Testimony of Paul Simonson.)

Q. All right, how many checks were not recorded?

A. There was four checks I saw not recorded at all in the books. However, I would like to explain that, sir. [288]

Q. All right.

A. Mr. Palermo showed recorded in his books a payment of \$1,584.00, a payment of \$1,200.00 for which I could not find a check for McCormick. I did find that on April 10 there was a check for \$465.08 not recorded on the books; July 10, 1950, a payment of \$19.71 not recorded on the book; on August 25, 1950, payment for \$2,632.68 not recorded on the book, and on November 25, 1950, a check for \$2,405.76 not recorded on the book. The total amounts including differences between the checks and the book showed \$3,214.40 not recorded on the books.

Q. The \$3,214.40 you are talking about does not include the checks that you gave him credit for as you have testified about?

A. I credited those payments against the checks which I could not find recorded on the books.

Q. All right. Now, referring to Mr. Palermo again and his books and records of 1950, did you have an opportunity to check them against the record of Joe Courtney as to checks that have been paid by Mr. Courtney to Mr. Palermo?

A. Yes, I did.

(Testimony of Paul Simonson.)

Q. Did you find some that were recorded in his various books and records?

A. I found two in the year 1950 from Joe Courtney were recorded on his records. [289]

Q. And how much did that total?

A. \$889.46.

Q. And did you find any not recorded in his books and records?

A. I found three not recorded in his books and records.

Q. And how much did that amount to?

A. \$1,542.60.

Q. Did you find any of those checks deposited at the bank?

A. I found two of these checks deposited in the bank.

Q. And did you find any not deposited in the bank?

A. I found that there were three payments which were not shown in the bank records. However, one payment is for \$933.00 which was a credit on a truck which Mr. Courtney testified about.

Q. All right, that was testified about?

A. Yes.

Mr. Bantz: Do you want me to start with another one, Your Honor?

The Court: No, I think we may as well adjourn. We will now recess until one-thirty this afternoon.

Thursday, July 25, 1957—1:30 o'Clock P.M.

The Court: All right, proceed.

Q. Mr. Simonson, I believe when we recessed

(Testimony of Paul Simonson.)

that we finished with McCormick Lumber [290] Company? A. No, with Joe Courtney.

Q. Yes, Joe Courtney. Now, did you have an opportunity to examine Mr. Palermo's records in the evidence that is now in the case in connection with the receipts received by Mr. Palermo from the Mt. Adams Loggers Association? A. I did.

Q. For the year 1950? A. 1950.

Q. How many checks were received that year from the Mt. Adams Loggers Association?

A. Six checks.

Q. And how many checks were recorded in his books and records?

A. I found three checks which were marked "Kingley" in Mr. Palermo's record which approximated that amount shown in the Mt. Adams Association.

Q. What did you say they were marked?

A. In his books they were marked "Kingley."

Q. Mr. Kingley was the signator of some checks from Mt. Adams; wasn't Kingley the man who signed some checks from Mt. Adams in 1950?

A. I don't know, sir.

Q. Now, were there any checks from the Mt. Adams Association not recorded in his books and records? A. There were three. [291]

Q. What were they?

A. It was October 18, \$218.23, and October 24, \$186.39, and one on November 20th, 1950, for \$194.60.

(Testimony of Paul Simonson.)

Q. Now, how many checks for the year 1950 were deposited in the bank which in accordance with the records were from the Mt. Adams Loggers Association?

A. Three of those checks were deposited in the bank.

Q. How many were not deposited in the bank?

A. I did not find three checks deposited in the bank.

Q. Now, turning to the year 1950, with Mr. Palermo and the S. D. S. Lumber Company, did you have an opportunity to check his records against the records now in evidence in this court?

A. Yes, I did.

Q. And did you find that there were any checks recorded in his books or records from the S. D. S. Lumber Company?

A. I found a payment recorded in the book in the amount of \$900.00 from S. D. S. Lumber Company in 1950, one payment.

Q. And did you find any not recorded in the book?

A. A check from S. D. S. Lumber Company in August 5, 1950, in the amount of \$148.58 wasn't recorded in the book. However, may I make an explanation, sir?

Q. You bet, or yes, sir.

A. There was a \$900.00 item recorded on Palermo's books for which I don't find in the evidence that S. D. S. Company [292] issued him any checks.

(Testimony of Paul Simonson.)

Q. Well, then, what was the total then of not recorded in the books?

A. Reflecting a credit for the \$900.00 total indicating that as far as the S. D. S. Lumber Company there was an overstatement of income reported of \$751.42.

Q. And on your statement there you show that by a parenthesis, the \$751.42?

A. Yes, I did.

Q. Under the heading, "Not Recorded in Book"? A. Yes, I do.

Q. Now, did you find any checks deposited in the bank? A. No, I did not.

Q. And were any not deposited in the bank?

A. A Check for \$148.58 I did not find deposited in the bank.

Q. Now, Mr. Simonson, I believe Exhibit 16 is the deposits in the Security State Bank at White Salmon, and did you make a compiled list of the checks from Exhibit 16 for the year of 1950 insofar as the ledger sheets—I mean the deposit slips were concerned for Joe Palermo? A. Yes, I did.

Q. And you have entitled it "Total Deposit" and "Identified as Income" or "Non-Income or Unidentified," is that correct? A. Yes. [293]

Q. What do you mean by the words "Identified as Income"?

A. We have in evidence checks which have been put in evidence and those checks have been identified by the witnesses as payment for logs or for other

(Testimony of Paul Simonson.)

services and those are the checks that I have identified as income.

Q. And then there is the heading "Non-Income or Unidentified." What do you mean by that?

A. Those are items on deposit for which there is no checks in evidence or the item wasn't income for some reason. We have not identified it as income in this particular case.

Q. Now, I notice at the top left-hand side is the date January 12, 1940, on my slip which I have erased and put "50." 1950. Is that a typographical error?

A. Yes, it is a typographical error.

Q. And have you changed your copy accordingly?

A. I have changed that in pencil on my copy.

Q. Now, what were the total deposits at the Security State Bank for the year 1950?

A. The total deposits for the year 1950 in the Security State Bank, \$37,204.46.

Q. And how much was identified as income of the total amount?

A. \$36,217.76.

Q. And then there was some of it "Non-Income or Unidentified"?

A. \$986.70. [294]

Q. Now, did you review the bank deposits as to the Bank of Stevenson for the year 1950 in connection with Mr. Palermo?

A. Yes, I did.

Q. And did you make a summary of that?

A. A similar summary to the other one, yes, sir.

Q. Now, for the Bank of Stevenson for the year 1950, what were the total deposits?

(Testimony of Paul Simonson.)

A. \$49,496.56.

Q. And what was the total amount "Identified as Income"? What is the total amount from the exhibits on this trial?

A. Bank of Stevenson, \$44,226.44.

Q. What is the "Non-Income or Unidentified"?

A. \$4,270.01.

Q. And now what is the total bank deposits shown for the two banks, the Security State Bank and the Bank of Stevenson?

A. Total deposit of the two banks is \$86,700.91.

Q. And what is "Identified as Income"?

A. \$80,444.20.

Q. And how much is "Non-Income or Unidentified"? A. \$6,256.71.

Q. Now, Mr. Simonson, did you make such a summary of all of the receipts for the year 1950 for Mr. Palermo, in accordance with the evidence admitted and recorded—that has been recorded in his books and records and that has not [295] been recorded in his books and records as well as being deposited in the bank or not deposited in the bank?

A. I did.

Q. Now, for the year of 1950, then, would you state what the total amount of deposits—no, the total amount recorded in the books and records of Mr. Palermo? A. \$66,090.94.

Q. Now, will you state the amount not recorded in the books? A. \$16,873.70.

Q. And what are the total amount of deposits?

A. \$80,444.20.

(Testimony of Paul Simonson.)

Q. And what is the total amount not deposited?

A. \$2,520.44.

Q. Now, did you make a total summary of how many checks he received during the course of the year?

A. Yes, I did.

Q. And what is the total?

A. There is a total of sixty-two checks.

Q. And how are those checks broken down?

A. We show checks for income '53, and non-income or unidentified checks, nine checks.

Q. And how many checks were recorded in his books?

A. Thirty-six—no, thirty-seven of the income checks.

Q. And how many were not recorded in his books?

A. Sixteen. [296]

Q. And how many checks were deposited?

A. Forty-five checks.

Q. And how many were not deposited?

A. Eight checks.

Q. Now, I believe, Mr. Simonson, that at the bottom or the top of each of the pages in either your handwriting or in somebody else's handwriting you have put the number of the exhibit pertaining to what you have testified about?

A. I have, yes.

Q. That is indicated on each page?

A. Yes.

Mr. Bantz: Would you clip those pages together?

The Clerk: As one exhibit?

(Testimony of Paul Simonson.)

Mr. Bantz: Yes, as one exhibit.

The Clerk: Plaintiff's 86.

Q. Now, Mr. Simonson, handing you Plaintiff's Exhibit 86 for Identification, let me ask you now, that is the summary sheets that you have been working with and reading from while we have been discussing the income from Mr. Palermo for the year 1950, from the evidence that has been produced here in court? A. That is right.

Q. And does that cover a complete summary of receipts insofar as you can tell by reviewing all of the evidence? A. That is right. [297]

Q. Does it show the amounts that have been received, the amounts recorded in his books and records, the amounts not recorded, the amounts deposited and the amounts not deposited individually by accounts and as a total summary?

A. That is right.

Mr. Bantz: Your Honor, at this time I am going to offer Plaintiff's 86 into evidence. I might say that I have—oh, no, I have one more—May I ask a couple more questions?

Q. Mr. Simonson, you have made up an original copy of what you have handed me as Plaintiff's Exhibit 86? A. Yes.

Q. Where is the original? A. You have it.

Q. Is there any difference between the original and the copy, to your knowledge? A. No.

Q. Do you mean as to the figures?

A. Except for the originals which I have originally prepared, I had different headings on those

(Testimony of Paul Simonson.)

and these numbers, and exhibit number to make my report on that.

Q. Let me ask you, by pointing out on Plaintiff's Exhibit 86, your original would be exactly the same except it had your identifying marks on it? A. Yes.

Q. Has your own and Internal Revenue exhibit number? [298] A. That's right.

Q. And it had a heading of some other type on it? A. Yes.

Q. Was there any change in the exact figures presented on this exact summary?

A. No. No, except for possibly typographical errors in transcribing.

Q. Yes.

Mr. Bantz: I will now offer it in evidence, your Honor, and I am prepared to turn over to the defendant a copy of it also with the understanding that it is a copy of the original of which I am willing to have him compare at any time afterward that he desires to compare it with the figures that I have. I would have put in the other but there was a memo on there which I couldn't feel was material to the case.

The Court: I see.

Mr. Moore. Is it all right, Your Honor, if we have just a little bit of time to examine it?

The Court: Yes.

Mr. Bantz: Is it agreeable that I proceed with the next year while you are examining this one?

Mr. Moore: Yes.

(Testimony of Paul Simonson.)

Mr. Bantz: Because I assume your accountant is going to examine it.

Mr. Moore: Yes, all right, fine. [299]

Q. Mr. Simonson, now referring to the year of 1951, do you have in front of you a summary sheet as we just have discussed for the year of 1950?

A. I do.

Q. I will at this time identify it. A. Yes.

Mr. Bantz: Mark it for identification, please. Will you clip the two together? Would you excuse us just a moment, Your Honor?

The Court: Yes. That is Plaintiff's 87.

Q. Mr. Simonson, for the year of 1951 did you compile from the evidence in this trial a summary for the deposits of Mr.—or for the gross income of Mr. Palermo as to being recorded in his books and records and not being recorded in his books and records, as well as the deposits in the bank and not being deposited in the bank for the following individuals or firms: Cecil C. Nichols, Stevenson Plywood, Mt. Adams Loggers Association, McCormick Lumber Company, C. O. Ackley; and then the deposits in the two banks that we have been talking about?

A. I did.

Q. Now, referring to a summary that you made in connection with Mr. Cecil Nichols for the year 1951, how many checks were received by Mr. Palermo during that year? A. Three. [300]

Q. How many checks were recorded in his books and records? A. None.

(Testimony of Paul Simonson.)

Q. And how many were not recorded in his books and records?

A. Three checks were not recorded.

Q. What was the total amount of checks not recorded? A. \$445.85.

Q. And how many were deposited in the bank?

A. There were two checks that were deposited in the bank.

Q. And how many were not deposited in the bank?

A. I found one check wasn't deposited in the bank.

Q. Now, referring still to 1951, and as to Stevenson Plywood Company, did you find any checks—how many checks did you find that had been paid to Mr. Palermo by Stevenson Plywood?

A. I found five checks.

Q. How many were recorded in his books?

A. One check was recorded in his book.

Q. How many were not recorded in his books?

A. There were four checks not recorded in the book.

Q. How many were deposited in the bank?

A. There were five of those checks deposited at the bank.

Q. And how many not deposited at the bank?

A. There were none that were not deposited.

Q. Now, referring to the receipts received by Mr. Palermo from the Mt. Adams Loggers Association for 1951, how many [301] did he receive that year? A. Twelve.

(Testimony of Paul Simonson.)

Q. And how many were recorded in the books?

A. I found one item recorded in the book under the name of McCormick which agrees with the check that he received exactly in amount from the Mt. Adams Loggers Association.

Q. And you checked that with reference to and against the bank records, did you, and the deposit slips?

A. Yes, I did.

Q. And then that was recorded in his book?

A. That one check was recorded in his book.

Q. And how many were not recorded, in his books, out of the twelve?

A. There were eleven not recorded in the book.

Q. And how many were deposited in the bank?

A. Eight.

Q. And how many were not deposited in that at the bank?

A. Four.

Q. Now, referring to the same year, to Mr. Palermo, and checking the McCormick Lumber Company records against the books of Mr. Palermo, how many checks did you find he received from the McCormick Lumber Company?

A. Twenty checks.

Q. How many were recorded in his books and records?

A. Fourteen recorded in his books. [302]

Q. And how many not recorded?

A. There were nine, totaling nine—or six, I am sorry, totaling \$9,365.49.

Q. And how many was the total deposited in the bank?

(Testimony of Paul Simonson.)

A. There were nineteen checks deposited in the bank.

Q. And how many not deposited in the bank?

A. One check.

Q. And going back now to the Mt. Adams Loggers Association, did I ask you what was the total amount not deposited in the books and records for 1951 for Mt. Adams Loggers Association?

A. You asked the number of checks.

Q. What was the amount?

A. Eight, amounting to \$4,924.97.

Q. Not deposited in the bank?

A. There were four checks.

Q. Now, referring to the receipts for the year 1951 from C. O. Ackley to Mr. Palermo, did you check the books and records as to this account?

A. I did.

Q. And how many checks did he receive from Mr. Ackley? A. Fourteen.

Q. And how many checks were recorded in his books?

A. There were thirteen payments recorded in his book.

Q. And how many not recorded in his [303] books? A. There was one.

Q. All right, were there some additional items not recorded in his books or partial payments not recorded in his books?

A. There were. For instance August 9, 1951, he received a check for \$5,053.97 from Mr. Ackley. On that date he—or approximately that date he re-

(Testimony of Paul Simonson.)

corded in his book \$4,853.16, and an understatement there of \$200.81, and the same is true of the check September 10, 1951. The amount, not recorded in the book was \$799.35, less than that, than the actual check.

Q. All right, and then what was the amount of checks not recorded?

A. The total amount of income not recorded in 1951——

Q. No, what was the amount of his checks not recorded in his book—well was the total amount not recorded in his book from Mr. Ackley \$3,502.75?

A. Yes.

Q. Now, as to the National Bank of Commerce, which was formerly Security State Bank, did you have a chance to compile the ledger sheets and the amount of the deposits for the year 1951?

A. I did.

Q. And what was the total deposit for 1951?

A. \$119,898.79.

Q. That is the total amount at the White Salmon bank? [304]

A. That is correct, sir.

Q. And how much was identified as income through the checks and records in evidence?

A. \$118,948.79.

Q. And how much was nonincome or unidentified?

A. \$950.00.

Q. Now, did you compile a summary of unreported income for 1951 that we have been discussing by individuals beforehand?

A. Yes, I had.

(Testimony of Paul Simonson.)

Q. All right, what was the total amount recorded in the books and records of Mr. Palermo?

A. \$98,178.22.

Q. And how much is the total not recorded in his books and records? A. \$21,951.48.

Q. And what was the total amount deposited?

A. The total amount deposited in the bank was \$119,898.79, and the income items there was \$118,448.79.

Q. That wasn't deposited? The last figure wasn't deposited which you read?

A. No, I am sorry, I read deposited.

Q. How much was not deposited in the year 1951? A. \$1,180.91.

Q. Making a total amount of gross income according to the evidence in what amount? [305]

A. That would be a total of \$98,178.22 and \$21,951.48, about \$119,000.00.

Q. What is the total amount of \$121,000.00 that you have got on the lefthand side?

A. That is \$120,129.70.

Q. That is the total amount of gross income?

A. Yes, that's right.

Q. How many were the total checks in 1951 that you received on which the records were received?

A. Fifty-four.

Q. And how many recorded in his books and records? A. Twenty-nine.

Q. And how many were not recorded in his books and records? A. Twenty-five.

(Testimony of Paul Simonson.)

Q. And how many checks were deposited?

A. Forty-eight.

Q. And how many were not deposited?

A. Three checks.

Q. Three? A. No, six checks, I am sorry.

Q. Six checks were not deposited? A. Yes.

Q. How many checks were for nonincome?

A. Three checks were for nonincome.

Q. Again on the bottom of each of the pages, Mr. Simonson, [306] have you in your own handwriting or my stenographer's handwriting generally placed the exhibit number? A. Yes, sir.

Q. Concerning each of these pages?

A. Yes, at the top of each page.

Mr. Bantz: I have offered Plaintiff's Exhibit 87 for evidence, your Honor.

Q. Is your record a duplicate of what you originally made up from the files—from your files and investigation of this case?

A. Except for headings and exhibits.

Q. Headings and exhibit numbers?

A. That is correct.

Q. But the figures and the amounts are the same unless there was typographical errors, I take it?

A. That is right.

Q. Did you have any typographical errors in this one that we changed with pencil?

A. Not that I know of.

Mr. Bantz: If you don't mind, your Honor, I think that they want to be looking at those while I continue.

(Testimony of Paul Simonson.)

The Court: That is all right.

Q. Now, Mr. Simonson, referring to the year 1952, did you make the same type of investigation or cross checking between the books and records of Mr. Palermo and the [307] evidence in this trial either at the time or prior to the time of this trial and then check it in the last day or so as to the year 1952 for the following individuals: Stevenson Plywood, Cecil C. Nichols, Bolter and Landgraf, Roy Landgraf, now deceased, Mt. Adams Loggers Association, S. D. S. Lumber Company, J. Hofert Company, C. O. Ackley, McCormick Lumber Company, Highland Lumber Company, Jackknife Mill, Columbia-Hudson, and the deposits at both banks, the National Bank of Commerce and the Bank of Stevenson?

A. Yes, I did.

Q. Now, the records that you have before you, are they a duplicate or an original report—or a copy of an original report that is in my possession prepared with headings that we have discussed previously?

A. Yes, they are.

Q. And the other identifying marks?

A. Yes.

Q. Now, referring to the year 1952, to the Stevenson Plywood account, did you check your records according to that one?

A. I did.

Q. And find any checks received by Palermo from Stevenson Plywood?

A. I did.

Q. How many checks were received?

A. Six checks. [308]

Q. And what is the total amount?

(Testimony of Paul Simonson.)

A. \$4,701.34.

Q. How many checks were recorded by Mr. Palermo in his books and records?

A. None were recorded.

Q. How many were recorded; did you say none?

A. None were recorded in his books.

Q. What was the total not recorded in his books and records? A. All six totaling \$4,701.34.

Q. How many were deposited in the bank by Mr. Palermo for the year 1952? A. Six checks.

Q. Now, referring to the account of Cecil C. Nichols for 1952, how many checks did Mr. Palermo receive in accordance with the evidence here?

A. Seven checks for 1952.

Q. And what was the total amount of the checks?

A. \$1,397.97.

Q. And were any of them recorded in his books and records? A. No, they were not.

Q. And what was the number not recorded in books by Mr. Palermo?

A. All six—or all seven.

Q. And what was the amount of the checks unrecorded? A. \$1,397.97. [309]

Q. And how many checks were deposited in the bank? A. One check.

Q. And how many checks not deposited in the bank? A. Six checks.

Q. What is the total deposited?

A. \$326.21.

Q. And how much money not deposited?

A. \$1,071.76.

(Testimony of Paul Simonson.)

Q. Referring to the receipts from Roy Landgraf for 1952, did you check that account?

A. Yes, I did.

Q. And what did you find as to the number of checks?

A. There was one check from Roy Landgraf in 1952.

Q. And what was the amount of that check?

A. \$221.27.

Q. And was it or was it not recorded in his books and records?

A. It wasn't recorded in his books.

Q. And was it deposited in the bank?

A. It was deposited in the bank.

Q. All right, refer now to the receipts from Bolter and Landgraf for 1952, what did your investigation show there?

A. I found that he received two checks totaling \$490.45. These were checks——

Q. Were these checks recorded or not recorded?

A. They were not. [310]

Q. And what was the total amount not recorded?

A. \$490.45.

Q. And what was the total deposited in the bank?

A. One check for \$231.00.

Q. And what was not deposited in the bank?

A. One check for \$259.45.

Q. In the year 1952 please refer to the Mt. Adams Loggers Association, did you check the records as to this account?

A. I did.

(Testimony of Paul Simonson.)

Q. And what was the number of checks he received from the Mt. Adams Loggers Association?

A. There were fourteen checks from Mt. Adams.

Q. And what was the total amount of the checks?

A. \$3,686.95.

Q. And how many were recorded in his books and records?

A. None were recorded in his books.

Q. There were fourteen not recorded in his books and records?

A. That is correct.

Q. And the total amount not recorded in his books?

A. \$3,686.95.

Q. And how much was deposited in the bank?

A. \$3,431.71, twelve checks.

Q. And how many were not deposited?

A. Two checks for \$255.24.

Q. Now, referring to the account of S. D. S. Lumber Company [311] for the year 1952, did you examine the checks payable to Joe Palermo?

A. Yes. There was one check for \$762.45.

Q. Was this recorded in his books and records?

A. It wasn't.

Q. Was it deposited in the bank?

A. It was deposited in the bank.

Q. And the receipts from J. Hofert Company for 1952 to Joe Palermo, what does this account show?

A. It shows one check in the amount of \$100.00.

Q. Was it or was it not recorded?

A. It wasn't recorded in the book.

Q. And was it deposited in the bank?

A. It wasn't deposited in the bank.

Q. Referring to the receipts for the year 1952

(Testimony of Paul Simonson.)

From C. O. Ackley, did you find any checks or does the evidence show any checks received from Mr. Ackley for this year? A. Yes, sir.

Q. How many? A. Eleven.

Q. What was the total amount that year?

A. \$44,496.68.

Q. How many checks were recorded in his books and records? A. Eight checks.

Q. What was the total amount recorded? [312]

A. \$33,150.74.

Q. How many checks were not recorded in his books and records? A. Three.

Q. And what was the total amount of those not recorded?

A. It was \$11,345.94, in income not reported.

Q. All right, what was the total amount deposited in the bank? A. \$44,496.68.

Q. Referring, Mr. Simonson, to the McCormick Lumber Company account for 1952 will you refer to that and the material that is in evidence, how many checks did you find that the McCormick Lumber Company paid to Joe Palermo, if any?

A. Twenty checks.

Q. What was the total amount of those checks?

A. \$66,800.44.

Q. And how many checks were recorded in his books and records? A. Seventeen.

Q. And what was the total amount recorded in his books and records? A. \$61,905.91.

Q. And how many were not recorded in his books and records?

(Testimony of Paul Simonson.)

A. There were three not recorded on his books and records.

Q. And what was the total amount not recorded?

A. The total not recorded in his books was \$4,894.53.

Q. And what was the total amount deposited in the bank? [313] A. \$66,800.44.

Q. All right, refer to the Highland Lumber Company, Inc., for the account of Joe Palermo in 1952, what did your investigation show as to the number of checks received? A. Two.

Q. And what was the total of those two checks?

A. \$2,172.96.

Q. How many checks were recorded in his books and records? A. One.

Q. And how many were not recorded?

A. One.

Q. And what is the total amount not recorded in his books and records? A. \$1,857.60.

Q. How many were deposited in the bank?

A. Both checks, \$2,172.96.

Q. Now, referring, Mr. Simonson, to the account of the Jackknife Mill, parentheses L. C. Coleman, who I think the evidence shows was the owner, what do your records show with reference to this account?

A. One check for 1952.

Q. What is the total amount?

A. \$1,368.00.

Q. Was that recorded in his books and records?

A. That was recorded. [314]

Q. Referring to the receipts from Columbia-Hud-

(Testimony of Paul Simonson.)

on Company in 1952, what does your investigation show as to the number of checks received?

A. One.

Q. And what was the amount?

A. \$1,212.26.

Q. And that this recorded?

A. Yes, it was.

Q. And was it deposited?

A. It was deposited.

Q. Now, Mr. Simonson, did you make a summary of the bank deposits to the National Bank of Commerce, White Salmon, for 1952 in which you identified the total deposits, and identified as income and nonincome or unidentified?

A. Yes, I did.

Q. Now, what was the total amount of deposits for 1952 in this bank?

A. \$128,206.54.

Q. And what was the total amount Identified as Income?

A. \$123,866.72.

Q. And what was the total amount of Nonincome or Unidentified?

A. \$4,339.82.

Q. Now, do you have a summary of the Bank of Stevenson for 1952?

A. Yes, I do. [315]

Q. All right, what was the total amount of money deposited that year?

A. \$1,857.60.

Q. And was this identified as income?

A. It was.

Q. Now, what was the total amount for the two banks, then, for gross receipts for the year 1952 as shown by the deposit slips?

A. The total deposits were \$130,064.14.

Q. And identified as income?

(Testimony of Paul Simonson.)

A. \$125,724.32.

Q. And nonincome or unidentified?

A. \$4,339.82.

Q. Now, did you, Mr. Simonson, prepare a summary of the receipts for the year 1952 concerning all of the companies or individuals that we have discussed for the year 1952? A. I did.

Q. And what was the total amount of the checks for the year 1952?

A. Total amounts of the checks, income checks was \$127,410.77.

Q. And the total amount of nonincome and unidentified? A. \$4,339.82.

Q. Then, what was the total of the bank account for the year? A. \$131,750.59.

Q. And what was the total amount recorded in his books? [316] What was the total for the year 1952? A. \$97,952.27.

Q. And what was the total amount not recorded in his books for 1952? A. \$29,458.50.

Q. And how much was the total amount deposited?

A. The total amount deposited of income was \$125,724.32.

Q. And how about nonincome deposits?

A. \$4,339.82, a total of \$130,064.14.

Q. And what was the total amount not deposited for the year 1952? A. \$1,686.45.

Q. All right, what were the total number of checks received during the year by Mr. Palermo insofar as the records show?

A. Sixty-seven income checks.

(Testimony of Paul Simonson.)

Q. And how many unidentified or nonincome?

A. Thirteen.

Q. And how many checks were recorded in his books and records?

A. Twenty-eight recorded, twenty-eight checks.

Q. And how many were not recorded in his books and records?

A. Thirty-nine were not recorded in his books and records.

Q. Thirty-nine income checks?

A. That is correct. [317]

Q. And how many nonincome?

A. Thirteen.

Q. Were not shown in his books?

A. Yes, were not shown in his books.

Q. How many checks were deposited in the bank account? A. Fifty-seven.

Q. Income checks? A. Yes, income checks.

Q. And how many unidentified checks?

A. Thirteen.

Q. How many did you say, Mr. Simonson?

A. Thirteen nonidentified checks.

Q. And how many did you find of the checks were not deposited for the year 1952?

A. Ten checks were not deposited.

Q. Mr. Simonson, are the figures in——

Mr. Bantz: Just a moment, would you mark this for identification? It needs to be stapled together.

The Clerk: Plaintiff's 88.

Q. Mr. Simonson, in Plaintiff's 88 for Identification, is this the sheets that you have been reading

(Testimony of Paul Simonson.)

from for the year 1952? A. It is.

Q. Are they the same—the figures the same as your original sheets in your file of the Internal Revenue file concerning [318] the year 1952?

A. It is.

Q. With the same exceptions that we have discussed previously? A. That is correct.

Q. But the figures themselves are the same?

A. Yes, the figures are the same.

Q. And on these you have placed here in your own writing or someone else's writing what exhibit is on each sheet, is that correct?

A. That is correct.

Q. That is written on each sheet? A. Yes.

Mr. Bantz: At this time, your Honor, I will offer Plaintiff's 88 in evidence and give them a copy.

The Court: All right.

Q. Mr. Simonson, in the previous reports that we have been discussing there, counsel and I noticed that on the bank statements you have the letter "S" to the left of the amount. What does that mean?

A. I have keyed the Bank of Stevenson.

Q. And if there is no "S" in front of it, what does that mean?

A. That means it went to the National Bank of Commerce or formerly Security State Bank.

Q. They are the accounts that are in evidence?

A. Yes, they are. [319]

Q. Now, Mr. Simonson, referring to the year 1953, did you make a similar study and comparison for the year 1953 with Mr. Palermo's books and rec-

(Testimony of Paul Simonson.)

ards and for the accounts with Stevenson Plywood, Jackknife Mill, McCormick Lumber Company, Mt. Adams Loggers Association and Seaton and Sprague, and the two banks—or the National Bank of Commerce deposits? A. I did.

Q. Now, referring to the Stevenson Plywood account for 1953 for Mr. Palermo, what does your investigation and your records that are in evidence here show as to the number of checks received for this year?

A. There were nine checks received.

Q. And what was the total amount of the checks received? A. \$16,034.87.

Q. And how many checks were recorded in his books and records?

A. There were four recorded in his books and records.

Q. And how much was the total amount?

A. \$9,543.83.

Q. And how many checks were not recorded in his books and records?

A. There were five checks not recorded.

Q. And what was the total amount of the checks not recorded? A. \$6,491.04. [320]

Q. And how many checks were deposited in the bank? A. Five.

Q. And what was the total deposit?

A. \$13,955.37.

Q. And how many checks were not deposited in the bank?

(Testimony of Paul Simonson.)

A. \$2,079.50—Four checks, I am sorry.

Q. Would you state that again?

A. There were four checks not deposited in the bank.

Q. And what was the total? A. \$2,079.50.

Q. All right, referring now, Mr. Simonson, to the Jackknife Mill, parentheses L. C. Coleman, for the year 1953, what did your investigation show as to the number of checks paid to Mr. Palermo for this year? A. There were eight checks.

Q. And what was the total amount?

A. \$21,129.02.

Q. And were these checks recorded on the books?

A. They were.

Q. And were any not recorded?

A. Except for the variation in a figure, all were recorded.

Q. How many were deposited in the bank?

A. Six.

Q. How many were not deposited?

A. Two checks. [321]

Q. Now, Mr. Simonson, in reference to the McCormick Lumber Company for 1953, what does the records show as to the amounts paid by the company to Joe Palermo; how many checks?

A. Thirteen checks.

Q. And what was the total amount of those checks? A. \$28,970.35.

Q. How many checks were recorded in his books and records? A. Eleven.

Q. And what was the total amount recorded?

(Testimony of Paul Simonson.)

A. \$26,629.67.

Q. And how many checks not recorded in his books and records? A. Two.

Q. And what was the total amount of the two?

A. \$2,340.68. With the variation in one of the total amount unrecorded was \$2,340.68.

Q. Now, I notice there is a difference in the figures there of \$29.22 in the check of May 28, 1953. Would you please explain that?

A. The check in evidence is in the amount of \$2,649.22. Mr. Palermo recorded in the amount about that time of \$2,600.00 income from McCormick Lumber Company on his records.

Q. And the McCormick records show the same, does it?

A. The McCormick records shows \$2,649.22.

Q. And you have then carried the \$49.00 over as an unrecorded [322] item? A. That is correct.

Q. How many checks were deposited in the bank?

A. Twelve.

Q. And how many not deposited? A. One.

Q. Now, Mr. Simonson, referring to the Mt. Adams Loggers Association account for 1953, what does your investigation show as to the number of checks received by Mr. Palermo from this company for that year? A. Twenty-five checks.

Q. What is the total amount of the checks?

A. \$18,785.08.

Q. And how many checks were recorded in his books and records? A. Thirteen.

Q. And how many checks were not recorded?

(Testimony of Paul Simonson.)

A. Twelve.

Q. What was the total amount of the checks recorded? A. \$13,661.40.

Q. And what was the total amount not recorded?

A. \$5,123.68.

Q. And how many checks were deposited to the bank account? A. Twenty.

Q. What is the total amount deposited?

A. \$16,365.67. [323]

Q. And how many checks were not deposited in the account? A. Five checks.

Q. And what was the total amount?

A. \$2,419.41.

Q. Now, Mr. Simonson, referring to the record of receipts from Seaton and Sprague, what does your record show and your investigation show as to the number of checks for the year 1953 received by Mr. Palermo from Seaton and Sprague?

A. Six checks.

Q. What is the total amount of the checks?

A. \$31,946.57.

Q. And he recorded these checks and he deposited them? A. He did.

Q. Now, referring to the compiled bank statement of the Nt. Bank of Commerce for 1953, did you compile the list of the deposits and the money identified as income and the list of nonincome or unidentified? A. I did.

Q. Now, before we go on again, why do you classify some of the monies as nonincome or un-

(Testimony of Paul Simonson.)

identified in this here? I notice a \$1,500.00 item dated July 15, 1953, from the Mt. Adams Loggers Association, nonincome or unidentified.

A. That \$1,500.00 item was Mr. G. L. Gibbons.

Q. Oh, yes. [324]

A. We did not contact Mr. Gibbons regarding that payment and did not find exactly what it was for, or else it was a payment for something—sale of equipment or something like that.

Q. All right, let me ask you this then, the matters listed in these and identified as income are the matters of checks that are in evidence in this trial, is that correct?

A. That is correct.

Q. And we are not alleging anything as to the other income?

A. No.

Q. Now, for the year 1953 what was the total amount of deposits at the National Bank of Commerce at White Salmon?

A. \$119,088.72.

Q. And how much was identified as income?

A. \$111,886.16.

Q. And how much is nonincome or unidentified, as we explained?

A. \$7,202.56.

Q. Now, Mr. Simonson, did you make a summary of the amount of money received for the year, the amount recorded in the year, and the amount not recorded, and the amount deposited and the amount not deposited?

A. I did.

Q. All right, and will you state what amount of money that the records show that he received for the year 1954? [325]

(Testimony of Paul Simonson.)

Mr. Velikanje: 1953.

Mr. Bantz: 1953, pardon me.

Q. Income and nonincome?

A. The total amount is \$124,068.45.

Q. How much was recorded in the books?

A. \$102,901.73.

Q. How much was not recorded in the books or records? A. \$13,964.16.

Q. And how much money was deposited in the bank account, both income and unidentified?

A. \$119,088.72.

Q. And how much money was not deposited in the bank? A. \$4,979.73.

Q. All right, Mr. Simonson, how many checks did he receive as a total in 1953, as far as the records show? A. Seventy checks.

Q. And how many checks were recorded in the books? A. Forty-two.

Q. And how many checks were not recorded in the books and records?

A. Of the income nineteen.

Q. And how many of the nonincome?

A. Nine.

Q. And how many checks deposited in 1953?

A. Fifty-eight checks. [326]

Q. Including nonincome?

A. Yes, including nonincome.

Q. How many checks were not deposited for the year 1953? A. Twelve checks.

Q. Twelve checks not deposited? A. Yes.

(Testimony of Paul Simonson.)

Mr. Bantz: Clip that together, please, and mark it for identification.

The Clerk: Plaintiff's 89.

Q. Mr. Simonson, Plaintiff's Exhibit 89 for Identification is what you have just been reading from and testifying from? A. It is.

Q. Is this a true copy of the original report that you made and which checks with the evidence now in this trial? A. It is.

Q. The only difference being what we talked about in the other one? A. That is correct.

Q. And I notice there is some writing on here listing some exhibits and exhibit numbers. Did you place that there? A. Yes, I did.

Q. And is that in connection with the trial here? A. Yes. Yes.

Q. Otherwise, they are the same as your original records? [327] A. That is correct.

Mr. Bantz: I will offer Plaintiff's 89, your Honor. I will give counsel a copy of the same.

Mr. Moore: With reference to Plaintiff's Exhibits 86, 87 and 88 for Identification, and also 89, assuming that that is the same, whenever on these summaries you have parentheses around something you mean that it is the reverse of what monies is in the column? A. That is correct, yes.

Mr. Moore: In other words, it means if it shows not recorded in book for instance and there are a number of columns and there is one that has parentheses around it, it means it is recorded in the book

(Testimony of Paul Simonson.)

but you couldn't find it and tie it in with the checks elsewhere? A. I think that is correct.

Mr. Moore: This \$151.42 item?

A. Yes, I think that is correct.

Mr. Moore: And also with reference to 86, 87, 88, and 89, when you refer to money that is on the books and records of Mr. Palermo, and you referred to that in your testimony and in the exhibits themselves, you referred to recorded in the book or not recorded in the book, by that you mean that they were or were not recorded according to the gross earnings statements, the photostats which are in evidence as Exhibits 70, 71, 72, 73, and 74? [328]

A. That is correct.

Mr. Moore: And you did not mean by your testimony that they were or were not recorded in any other records which Mr. Palermo might have had as far as you know?

A. No, they were not recorded in the gross receipts records which we obtained from your office as to the figures.

Mr. Moore: In other words, any papers or slips or anything else that Mr. Palermo may have had in his possession relating to receipts, for instance, assuming that he had something else in his possession, which would indicate receipt of a check which you say is not recorded in book, it may have been in his possession by a record showing a receipt of that check, but you merely refer to one page in this book or two pages in this book?

(Testimony of Paul Simonson.)

A. I referred to one or two pages which you gave me as a receipt record.

Mr. Moore: And just to clear it up, that is what you asked for, wasn't it? A. That is correct.

Mr. Moore: I have no objection.

The Court: To any of these four?

Mr. Bantz: He is still checking 89.

The Court: Oh, I see. 86, 87, and 88 are admitted.

(Whereupon, said summaries were admitted in evidence as Plaintiff's Exhibits, 86, 87, and 88.) [329]

Q. Now, Mr. Simonson, as to Plaintiff's Exhibits 86, 87, and 88, did you have any knowledge of any other books or records than what you checked?

A. No, I did not.

Q. Did you ask for all the books and records for those years covered in those exhibits, for the receipts? A. We asked for the receipts record.

Q. And those are what you got for that year?

A. Yes.

Mr. Bantz: For clarification may I ask the witness on a couple of matters?

The Court: Yes.

Q. Referring to Plaintiff's Exhibit 89, counsel would like to know what are the partial parentheses here.

A. There are two checks in evidence. One is dated February 16th, 1953, and also February 25, 1953. The checks are \$78.12 and \$111.24. I put the paren-

(Testimony of Paul Simonson.)

theses there to indicate that they go with the item shown on Palermo's records as \$180.60.

Mr. Moore: That is supposed to be in effect a bracket?

A. Yes, that is in effect a bracket. It should be.

Mr. Moore: Yes, I see. No objection to 89, your Honor.

The Court: 89 will be admitted.

(Whereupon, said summary was admitted in evidence as Plaintiff's Exhibit No. 89.) [330]

Q. Mr. Simonson, handing you Plaintiff's Exhibit 14, would you examine that Exhibit?

A. Yes, sir.

Q. Have you had a chance in the past to check through that Exhibit? A. I have.

Q. And what generally is that exhibit?

A. Those are deposit tickets to Joe Palermo's account at White Salmon Bank in Washington.

Q. For what year? A. 1948.

Q. All right, handing you Plaintiff's Exhibit 15, would you examine that. Have you had a chance to see that previously? A. I have. I have.

Q. And have you had a chance to look the matter over in connection with this case? A. I have.

Q. And just generally what is that?

A. Those are deposit tickets to Joe Palermo's deposit account in 1949 in the Security State Bank at White Salmon.

Mr. Bantz: May I have Plaintiff's Exhibits 22, 25, 47 and 49.

Testimony of Paul Simonson.)

Q. Mr. Simonson, handing you Plaintiff's Exhibit 22 for Identification, will you please examine that exhibit? [331] A. Yes.

Q. Have you seen that exhibit before?

A. I have.

Q. And have you had a chance to check it over?

A. Yes.

Q. And just generally what is that exhibit?

A. It is ledger sheet to the account for Joe Palermo for the years beginning June, 1947, through November 23, 1949, in the Security State Bank.

Q. And do you recall that part of 1949 is on the other exhibit, I believe it is 23?

A. Yes; I recall.

Q. And has been admitted?

A. I recall, yes.

Q. Handing you Plaintiff's Exhibit 85 for Identification, will you examine that, please?

A. Yes, sir.

Q. Have you seen that before?

A. Yes, I have.

Q. And where did you receive that?

A. I received that from Mr. Moore on September 14, 1955.

Q. And what does that purport to be?

A. That is photostatic copy of receipts record of Joe Palermo for 1948 and also included receipts for 1947.

Q. Is that partial for 1947 or total? [332]

A. I believe that is the total for 1947.

Mr. Bantz: Your Honor, if we could have about

(Testimony of Paul Simonson.)

ten minutes, I will try and get my exhibits down and start going. We need about that time.

The Court: All right, we will take a recess.

(Whereupon, after recess the following proceedings occurred:)

Q. Mr. Simonson, for the years of 1950, 1951, 1952 and 1953, did you make a summary of the number of checks that were received by Mr. Palermo, and the number that were recorded in his books and records and the number that were not recorded in his books and records? A. I did.

Q. And what is that summary for the four years included in the indictment?

A. The total for the four years shows that Palermo received 235 checks for logs or services. There were 99 checks not recorded on the books, and the percentage of those items were 42.1 per cent.

Q. Now, Mr. Simonson, did you make this summary that you just read from the figures that you have talked about here in the past one and a half hours of the summary that you made for the years 1950, 1951, 1952, and 1953? A. Yes, sir.

Q. And, then, you added to that the preparation of the [333] percentages of the number of checks, at my request? A. That is correct.

The Clerk: Marking Plaintiff's 90, your Honor.

Q. And this is in conjunction with the matters that are in evidence and have been admitted?

A. That is correct.

(Testimony of Paul Simonson.)

Mr. Bantz: I will offer this summary in evidence.

Mr. Moore: Of what?

Mr. Bantz: Of all income checks.

Mr. Moore: No objection.

Mr. Bantz: No objection, he said.

The Court: All right, it will be admitted.

(Whereupon, said summary of checks was admitted in evidence as Plaintiff's Exhibit No. 90.)

Q. Mr. Simonson, handing you Plaintiff's Exhibit No. 1 for Identification, have you had an opportunity to see that? A. I have.

Q. And what is that?

A. This is the 1948 income tax return of Joe Palermo and Bertha Palermo.

Q. And you are familiar with it? A. I am.

Q. Mr. Simonson, handing you Plaintiff's Exhibit 42 for [334] Identification? A. Yes, sir.

Q. Have you seen that exhibit before?

A. I have.

Q. Have you made some calculations concerning that exhibit? A. I have.

Q. And what is that exhibit?

A. That is a check of the S. D. S. Lumber Company, dated July 2, 1948, in the amount of \$750.33 and payable to Joe Palermo.

Q. Now, handing you Plaintiff's Exhibit 33, just state if you have seen those before and had a chance to review those before? A. I have.

(Testimony of Paul Simonson.)

Q. Now, generally what are they, not specifically, but just what are they?

A. Those are checks of Columbia-Hudson Lumber Company, for the year 1948, made payable to Joe Palermo.

Q. Now, handing you Plaintiff's Exhibit 77 for Identification, have you seen that exhibit before?

A. Yes, I have.

Q. What is the exhibit?

A. Those are two checks made payable to Joe Palermo in the year 1948 by Lyle Lumber Company.

Q. Now, I believe I have just showed you Plaintiff's Exhibits [335] Nos. 22, 14, which is the deposit slips all concerning the year 1948, Plaintiff's Exhibit 85, and the three groups I just handed you just a moment ago, which were Plaintiff's Exhibits 77, 33 and 42. Now, have you had a chance to make a schedule concerning the checks of 1948?

A. I have.

Q. That is concerning the companies or individuals that are shown in Plaintiff's Exhibits for Identification 42, 33, 77, and 85, 14 and 22?

A. That is correct.

Q. Mr. Simonson, have you had a chance to check the checks and other matters here against the gross receipts book of Mr. Palermo for the year of 1948?

A. The photostatic copy, yes.

Q. The photostatic copy given to you by Mr. Moore?

A. Yes, Mr. Moore.

Q. And, then, that is from what you made up a schedule?

A. That is correct.

(Testimony of Paul Simonson.)

Mr. Bantz: I will have it marked for identification.

The Clerk: That will be Plaintiff's 91.

Q. Handing you Plaintiff's Exhibit 91 for Identification, that is your work sheets?

A. That is my work sheets.

Q. For the year 1948?

A. '48, yes, sir. [336]

Q. And is that concerning the matters of exhibits that we have been talking about here, including Exhibit 85 which has been identified as the Palermo Gross Receipts for 1948?

A. That is correct.

Q. And what generally does that exhibit show, not specifically, but what is it made up for?

A. It shows the total amount of checks received from these customers, the amount recorded on the books, not recorded on the books, deposited in the bank, and not deposited in the bank.

Q. For the year of 1948?

A. Yes, for the year of 1948.

Q. For Joe Palermo? A. Yes.

Mr. Bantz: Your Honor, at this time I am going to offer Plaintiff's 91, which is the compiled summary of Plaintiff's Exhibit 42, which is the checks of S. D. S. Lumber Company, Plaintiff's Exhibit 33 from Columbia-Hudson Lumber Company, Plaintiff's Exhibit 77 from Lyle Lumber Company, Plaintiff's Exhibit 85, which I only wish to offer the part of that referring to the year of 1948, and any way that the Court desires me to cut out 1947, and Plaintiff's Exhibit 14, which are the bank deposit slips,

(Testimony of Paul Simonson.)

and Plaintiff's Exhibit 22, which are the deposit registers of the bank account or the checking [337] account of the bank account at White Salmon, and the only part I want to submit is the part covering the year 1948. I also want to offer Plaintiff's Exhibit 1, which is the income tax return of Joe Palermo for the year of 1948, and I make such offer only for the purpose that I want to show that there was similar actions or transactions in the indictment years, and for not any money of those particular years, except as to similar transactions that will be testified from Plaintiff's Exhibit 91 that I have offered in evidence.

The Court: Mr. Moore, do you want the record to show an objection to it?

Mr. Moore: Yes, an objection. Do you want me to state it as I did on the prior objection?

The Court: Yes.

Mr. Moore: First of all, with reference to all of the exhibits for identification recited by Mr. Bantz, and he has now offered, as immaterial; and, secondly, with reference to 77 for identification——

The Court: Which one is that, 77?

Mr. Moore: 77. Checks from the Lyle Lumber Company.

The Court: Oh, yes.

Mr. Moore: Insufficient identification.

The Court: Yes.

Mr. Moore: In reference to 91 by reason of [338] its inclusion of the substance of the rest of the exhibits for identification, and that the same has not

(Testimony of Paul Simonson.)

been shown to or even tend to show matters which Mr. Bantz seeks to prove thereby as previously stated on the other exhibits as stated before.

The Court: Very well, without repeating it, I want the jury to bear in mind that the same thing applies to the evidence of 1948, that I previously told you applies to 1949, that it isn't one of the indictment years and does not tend to prove the offense charged in the indictment years which cover subsequent years, but the purpose of it is to show the same pattern or method of operation and is to be considered and given whatever weight you think it is entitled to as bearing on the question of intent of the defendant for the years mentioned in the indictment. Now, I got lost here. These are all scattered around through my notes. The first one is which one? Is that Exhibit 1?

Mr. Bantz: Yes, 1.

The Court: It will be admitted.

(Whereupon, said tax return was admitted in evidence as Plaintiff's Exhibit No. 1.)

The Court: What is the next one in chronological order?

Mr. Bantz: 14. In chronological order, 14. [339]

The Court: Any of this shown for the year prior to 1948 should be deleted or not made visible to the jury.

Mr. Bantz: That is right, I have got the ledger sheet and it shows 1947 and anything I have I will

(Testimony of Paul Simonson.)

take off with counsel's permission. I am not trying to show 1947 in it.

The Court: Well, it will be understood that anything prior to 1948 will be deleted or cut off. What is the next one after 14?

Mr. Bantz: We have 22.

The Court: 22.

Mr. Bantz: I am sticking to the two years 1948 and 1949, Exhibit 22, your Honor.

The Court: I have '47 in my notes.

Mr. Bantz: Well, it does have part of '47 and it will be taken out.

The Court: It will be deleted. You are going to cover '49?

Mr. Bantz: Well, I have covered it with the exception of three items.

The Court: You didn't have 15 in there?

Mr. Bantz: No.

The Court: Now, what is the next one after 14?

Mr. Bantz: 22.

The Court: 22, yes, I have that. [340]

Mr. Bantz: 33.

The Court: All right, 33.

Mr. Bantz: 42.

The Court: Wait just a moment, where is 33. All right, 33 will be admitted.

Mr. Bantz: 42.

The Court: 42 admitted then.

Mr. Bantz: 77.

The Court: All right, admitted.

(Testimony of Paul Simonson.)

Mr. Bantz: 85.

The Court: And 85 is admitted.

Mr. Bantz: And 91 which was the summary, your Honor.

The Court: All right, 91.

(Whereupon, said documents were admitted in evidence as Plaintiff's Exhibits, 22, 33, 42, 77, 85, 91.)

The Clerk: Your Honor, on the blocking out I would like to have counsel help me designate which of those portions of the exhibits should be blocked out.

The Court: Both counsel, you mean.

Mr. Bantz: Yes, that is agreeable.

The Court: We can do that afterwards.

Mr. Bantz: Now, Mr. Simonson, handing you Plaintiff's Exhibit 91—your Honor, I will just save a little bit of [341] time; I will read this myself. It has been admitted.

The Court: All right. That is all right.

Mr. Bantz: This is a summary of the receipts in connection with Palermo from the Columbia-Hudson Lumber Company during the year 1948. The total amount of money paid to Mr. Palermo is \$9,138.23. There was recorded in the books \$2,789.10. There was not recorded in the books \$6,349.13. There was deposited in the bank \$7,117.58 and there was not deposited in the bank \$2,020.64. In the year 1948 receipts from the S. D. S. Lumber Company, there was a check in the amount of \$750.33. It wasn't re-

(Testimony of Paul Simonson.)

corded in the books and records and it was deposited. In the year of 1948, from Lyle Lumber Company, the records show that there was two checks paid to Mr. Palermo in the amount of \$6,368.44. They were recorded in the books in the amount of \$6,012.42, and not recorded in the books in the amount of \$356.02, and \$6,368.44 was deposited in the bank.

Q. Now, Mr. Simonson, will you please examine Plaintiff's Exhibit 15 for Identification. Have you seen that before? A. I have.

Q. And what is that generally?

A. Those are deposit tickets to the account of Joe Palermo in the Security State Bank, White Salmon, Washington, for the year 1949. [342]

Q. All right, have you had a chance to review those deposit slips in connection with a summary for the year 1949? A. Yes.

Q. Will you examine Plaintiff's Exhibit 43 for Identification and state if you have seen that before?

A. Yes, I have.

Q. And what does that purport to be?

A. That is a check of the S. D. S. Lumber Company to Joe Palermo for \$125.80, dated December 2nd, 1949.

Q. Now, handing you Plaintiff's Exhibit 46, what is that group of exhibits, just generally?

A. Those are checks of C. O. Ackley payable to Joe Palermo in the year 1949.

Q. And handing you Plaintiff's Exhibit 34, have you seen that before? A. Yes, I have.

Q. And what does that purport to be?

(Testimony of Paul Simonson.)

A. Those are checks of the Columbia-Hudson Lumber Company payable to Joe Palermo during the year 1949.

Q. All right, have you used that exhibit in making up a schedule for the year 1949?

A. On my schedule I used photostats which have been checked with these exhibits.

Q. Now, handing you Plaintiff's Exhibit 78 for identification, have you seen that exhibit [343] before?

A. Yes, I have.

Q. Have you checked through it in connection with your summary for the year of 1949?

A. I have.

Q. Is that exhibit for the year of 1949?

A. Yes.

Q. Handing you Plaintiff's Exhibit 80 for identification, have you seen that before?

A. I have.

Q. And have you checked that over in connection with a summary for the year 1949?

A. Yes, I have.

Q. Now, Mr. Simonson, there has been admitted in evidence the income tax return of 1949, the work papers—which is Plaintiff's Exhibit 2 and Plaintiff's Exhibit 26, which are the work papers of Mr. Bates for the year 1949, and Plaintiff's Exhibit 70 for the year 1949, which is the gross earnings of Mr. Palermo as turned over to the Internal Revenue by Mr. Moore. You are familiar with those?

A. I am.

Q. Now, in connection with Plaintiff's Exhibits 2,

(Testimony of Paul Simonson.)

26, 70, that have been admitted, and Plaintiff's Exhibits 15, 34, 46, 78, and 80 that you just looked at on the stand, have you compiled a summary for the year of 1949 showing [344] the amount of monies received in accordance with the gross income of Mr.— in connection with Plaintiff's Exhibit 70 showing the gross receipts of Mr. Palermo as to the checks recorded in his books and not recorded, amounts deposited in the bank and not deposited in the bank?

A. I have.

Mr. Bantz: Would you please mark this for identification?

The Clerk: Plaintiff's 92.

The Court: 92.

The Clerk: Yes, sir.

Q. Now, Mr. Simonson, handing you Plaintiff's 92, state if that is your work papers concerning your summary for the year 1949? A. That is.

Q. And that is what you made up as a result of the exhibits that we have just been examining, the three that have been admitted and the five that have just been identified?

A. That is correct. And may I explain?

Q. Yes.

A. On this one with reference to C. O. Ackley there is some of Mr. Blankenship's writing on that. I checked those figures.

Q. Yourself? A. Yes, myself. [345]

Q. And this summary is similar to the summaries that have been admitted for the years 1950, 1951, 1952 and 1953? A. That is correct.

Testimony of Paul Simonson.)

Q. And were they made in connection with 70 which is the gross receipts of Mr. Palermo?

A. Yes.

Mr. Bantz: Your Honor, at this time I will offer in evidence for the year 1949, Plaintiff's Exhibits for Identification 15, 34, 46, 78, 80, 92. If I may a moment—I might have left one out here, just a moment.

The Court: Those are the same ones you mentioned in your previous question to Mr. Simonson?

Mr. Bantz: Yes, they are, your Honor.

The Court: How about 43, Mr. Bantz, it isn't in evidence.

Mr. Bantz: Your Honor, may I have back—or Mr. Taylor, the one that has the receipts in the bank that I just gave to you that we are going to block out.

The Court: The reason I asked you about that, it isn't admitted.

Mr. Bantz: Yes, I know, and he just called that to my attention. Oh, your Honor, I have 43 and it was covered up and I showed it to him, I am sorry.

The Court: I see. Do you wish to offer 43, then?

Mr. Bantz: Yes, I do wish to offer 43 because it is [346] part of the summary that Mr. Simonson has drawn. I wish to offer it on the same basis that I offered 1948, for similar transactions and omissions for those years, and not to the current intent of the years in issue here.

(Testimony of Paul Simonson.)

Mr. Moore: With reference to the offered exhibits for identification, your Honor, our objection goes to 15, 34, 43, 46, 78, 80, 92, on the basis that the same is immaterial, that the same do not have any tendency to prove that which Mr. Bantz claims that they would, and in addition with reference to Exhibit 78 for Identification, insufficient identification.

The Court: Let me see, 78 is a check identified by Everett Thoren of the Lyle Lumber Company, is that it?

Mr. Bantz: Yes, your Honor. That was by Mr. Thoren from the man who took over the Lyle Lumber Company.

The Court: Oh, I see.

Mr. Bantz: And had the books and records of the Lyle Lumber Company.

The Court: Oh, yes, I remember. 15, 34, 43, 46, 78, 80, 92 will be admitted. And I simply call your attention to the fact that these pertain to the year 1949 and that is a year prior to the indictment, and I call your attention that the limited purpose for which they are admitted will apply and be considered by the jury. All right. [347]

(Whereupon, said documents were admitted in evidence as Plaintiff's Exhibits No. 15, 34, 43, 46, 48, 80 and 92.)

Mr. Bantz: If I may, your Honor, I will read from the Exhibit 92.

The Court: All right.

Mr. Bantz: This concerns the year 1949 and con-

Testimony of Paul Simonson.)

erns receipts from the Lyle Lumber Company paid to Mr. Palermo and the amount was \$22,929.20 for a total of twelve checks. Seven checks were recorded in his books and records, totaling \$19,000.00. There were five checks not recorded in his books and records, totaling \$5,129.20, and there was deposited in the bank eleven checks and the only one not deposited was a check in the amount of \$98.44.

Q. Mr. Simonson, referring to this, what figure is this one, please?

A. That's—I am sorry, right now I can't—

Mr. Bantz: It is a matter of deposit in the bank account. If your Honor please, when we are through we will check them again to be sure that it is correct. It is kind of erased and I think I can't tell now.

The Court: All right.

Mr. Bantz: Referring again to Plaintiff's Exhibit 92, from the Columbia—no, the S. D. S. Lumber Company, Mr. [348] Palermo received a check in the amount of \$125.80, and the check wasn't recorded in the book and not deposited in the bank. With reference to the account with C. O. Ackley for the year 1949, Mr. Palermo received six checks in the amount of \$7,535.36. He recorded in his books \$5,392.00. He did not record in his books and records \$2,143.36, and he deposited in the bank account all six checks, totaling \$8,535.36. In the year 1949, he received from Stevenson Plywood Company a total of five checks amounting to \$2,367.65. He recorded in his books and records \$1,879.65 and he did not record in his books and records \$488.00. He depos-

(Testimony of Paul Simonson.)

ited in the bank \$2,266.65 and he did not deposit \$101.00 in his account. During the year 1949, he dealt with the Columbia-Hudson Lumber Company and he received a total of twenty checks which amounted to \$4,087.16—I believe that is eighteen checks amounting to \$4,087.16. He recorded in his books \$1,267.55 and he did not record sixteen checks amounting to \$2,819.61. He deposited eight checks in the amount of \$2,763.95. He did not deposit ten checks in the amount of \$1,323.21.

Q. Mr. Simonson, handing you Plaintiff's Exhibit 66 for Identification, have you seen that exhibit before? A. I have.

Q. And generally what is that exhibit?

A. That is a net worth trace for the years 1949 to 1953.

Q. What do you mean by a net worth [349] trace?

A. It is a computation of income based on a net worth, that is adding up his assets and liabilities and determining the increase in his net worth each year.

Q. Now, you mean that that is determined from one calendar year to the next calendar year?

A. That is correct.

Q. Well, does that show on that exhibit year by year?

A. It does for the years 1949 through 1953.

Q. And where did we receive that exhibit?

A. Mr. Blankenship received this from Mr. Moore, as testified to yesterday.

Q. That was in connection with the power of at-

Testimony of Paul Simonson.)

orney that we have? A. That is correct.

Q. Or that he had, pardon me. Now, have you examined that exhibit as to generally the figures that we have that are now in evidence and the bank statements concerning the year 1949 up to date?

A. Yes, I have.

Q. And how does that exhibit generally compare with what our figures would show, and I don't mean to the dollar but within a few dollars of each other?

A. Generally for the years 1952 and 1953 I think this would be reasonably accurate net worth of Joe Palermo.

Q. Now, is there any discrepancy in there that you can put [350] your finger on or is it fair in all respects?

A. There is omitted from the net worth at the end of 1952 and 1953 the savings account in the Bank of Stevenson now in evidence.

Q. And what did that amount to?

A. Approximately \$10,000.00, plus the interest accrued on the account.

Q. Now, I take it that this sheet is what an accountant makes up for a net worth, is that right?

A. This is an accountant's work, yes.

Q. Now, what was the net worth that he started with in 1949? A. In 1949 it is \$19,208.80.

Q. And what was the net worth at the end of 1949? A. \$26,811.07.

Mr. Moore: Is 66 an identification or in evidence? I don't know whether it is or not. Did you say that it was?

(Testimony of Paul Simonson.)

Mr. Bantz: It hasn't been admitted. Yes, 66 has been admitted.

Q. What is the net worth at the end of 1949?

A. \$26,811.07.

Q. Now, starting with the year 1950, what does he show, what is the net worth for that year of 1950?

A. The net worth at the end of 1950 is \$57,211.31.

Q. Now, how much increase is there between the years 1949 and 1950? [351]

A. \$30,400.24.

Q. Now, what is the net worth in the year of 1951?

A. The net worth shown here is \$93,933.46, at the end of 1951.

Q. And what is the net worth increase then for the year 1951?

A. \$36,722.15.

Q. All right. Now, in 1952 what does that exhibit show as his net worth for that year?

A. \$119,360.41.

Q. And what was the increase for the year 1952?

A. \$25,426.95.

Q. Now, as far as you are concerned is that a correct statement of his net worth at that time?

A. At the end of 1952 there was a savings account in the Bank of Stevenson with approximately \$10,000.00 in the account which is not reflected on this net worth.

Q. There was more than \$10,000.00?

A. There was a little bit more. \$10,000.00 plus interest accrued.

Q. In other words, you are assuming that this is

(Testimony of Paul Simonson.)

he correct net worth with the execption then of an item of \$10,000.00, or adding the \$10,000.00 what is the net worth at the end of 1952?

A. Approximately \$129,000.00, little bit over \$129,000.00.

Q. What then would be the increase in the net worth from the [352] year 1951 to the end of 1952?

A. Approximately \$35,400.00.

Q. Now, what is the net worth at the end of 1953?

A. \$138,084.44.

Q. All right, now, with reference to that how much was the increase between 1952 and 1953 as shown on this statement?

A. \$18,724.03.

Q. All right, was the \$10,000.00 still in the bank in 1953?

A. Yes.

Q. At the end of 1953?

A. It was.

Q. And is it reflected on this net worth statement?

A. No, it isn't.

Q. Then, what would the net worth statement be at the end of 1953 if the \$10,000.00 were included?

A. \$148,084.00 plus the accrued interest on the savings account.

Q. Then, if the figure was \$148,000.00 plus dollars, what would be the increase from the end of 1952 to the end of 1953?

A. It would be the same statement as shown here except with the accrued interest in the bank account for 1953, it would be an increase of \$18,724, plus the accrued interest.

Q. Let me ask you this then, if the figure of

(Testimony of Paul Simonson.)

\$138,000.00 is increased \$10,000.00, does not the net worth for the year [353] increase \$10,000.00?

A. Not for the year before.

The Court: You counted it the year before.

Mr. Bantz: That is what I wanted to bring out.

Q. In other words, in your figure here you have not counted it for the year before?

A. In the computation I was assuming that figure in the year of 1952 would be increase.

Q. All right. In other words, there is a \$10,000.00 difference between the net worth shown in there than what there would be if the \$10,000.00 is added?

A. That is correct.

Q. Now, does that net worth trace show what he reported for his income starting with the year 1949 through 1953? A. It does.

Q. All right, what does he show for his income for the year 1949? A. Reported or indicated?

Q. No, reported.

A. Reported income was \$1,824.64 in 1949.

Q. Now, there is the item of "Indicated Net Income"; what does that mean?

A. That is indicated income by making the net worth trace that it would be \$9,602.27.

Q. All right, then what is the difference between what he [354] reported and what this sheet shows was his income for the year 1949?

A. \$7,777.63.

The Court: Pardon me, you are giving the net income and not the tax, on that figure, that is the net income and not the tax?

(Testimony of Paul Simonson.)

Mr. Bantz: Yes.

A. Yes.

Q. Do you understand that now? A. Yes.

Q. Now, for the year 1950 what income was reported under this particular sheet?

A. \$4,553.00.

Q. Is that the same figure that is on his income tax return? A. That is correct, yes.

Q. Now, according to his net worth statement, what is the indicated net income for the year 1950?

A. \$35,225.12.

Q. And what is the difference for that year?

A. \$30,672.12.

Q. Now, for the year 1951 what was his reported income for that year? A. \$13,378.81.

Q. And what does his figures on the net worth trace show as his indicated net income for that year?

A. \$46,740.15. [355]

Q. And what is the difference for that year?

A. \$33,361.34.

Q. Now, according to this over here the last figure you read was \$46,740.15, and that is indicated net income and not gross earnings?

A. Yes, it is indicated net income.

Q. Now, referring to the year 1952 what income was reported in accordance with this net worth trace here? A. \$12,791.22.

Q. And what does this show was the indicated net income for the year 1952? A. \$42,937.37.

(Testimony of Paul Simonson.)

Q. And what is the difference?

A. \$30,146.15.

Q. Now, for the year 1953 what was reported for this year?

A. \$17,725.32.

Q. And what was the indicated net income?

A. \$32,966.94.

Q. And what is the difference in the year 1952?

The Court: '53.

Q. '53, pardon me. A. \$15,241.62.

Q. Mr. Simonson, there is actually a difference between the allegations in the indictment of figures of money than there is in this net worth, is that correct? [356]

A. That is correct.

Q. Which is the greater, do you recall; which is the highest?

A. The net worth shows a greater difference.

Q. The net worth shows a greater difference?

A. Yes.

Q. Were the items that we have been discussing and that are in evidence in accordance with the indictment or with the net worth?

A. The items in evidence are in accordance with the indictment.

Q. And do the figures in the indictment generally check with what the evidence has produced in here and in accordance with your summaries?

A. Yes, sir.

Q. Are they quite close?

A. I think that they are exactly right.

Q. Handing you Plaintiff's Exhibit 67, which has been admitted, what is that, Mr. Simonson?

Testimony of Paul Simonson.)

A. This is——

Mr. Bantz: Just a moment. Your Honor, would you mind my standing here. I have only one copy and I need to ask him these questions.

The Court: That is all right.

Q. What is this now?

A. This is a schedule of Differences between Reported Net [357] Income and Indicated Net Income.”

Q. Tell me what that means.

A. The accountant has prepared a schedule of the total receipts reported, the indicated receipts, and the increase or decrease in receipts for that year. The schedule also includes the expenses reported, the indicated expenses per his analysis and the increase or decrease in those expenses.

The Court: What number is that, please?

Mr. Bantz: That is 67, your Honor.

A. That is for the years 1951, 1952, and 1953.

Q. Now, is this the same thing we were discussing with the other exhibit?

A. It bears a relationship to it but it isn't the same, and this is actually going into the indicated receipts and to the expenses and determining where it goes entirely by the return and what is indicated and the net worth is not used in making this compilation.

Q. In other words, the indicated matter that is shown on Exhibit 67, would it be right to say that it is from the records that are probably in evidence that he obtained checks for during those years?

(Testimony of Paul Simonson.)

A. It would not be possibly based upon the records in evidence. Apparently the expenses were determined from some sort of checks and invoices and the receipts it does [358] not indicate on here where the receipts figure was obtained.

Q. Now, I just want to ask you this: In the matter we have in the indictment are we challenging anything as to the expenses?

A. No, we are not.

Q. Have you accepted in your statement the expenses of Mr. Palermo?

A. The expenses shown on the returns are accepted for our compilations here.

Q. In this case?

A. Yes, in this case.

Q. Now, I am reading here from the year——

The Court: Pardon me, it is not clear to me and maybe not to the jury where this document came from. Is this from the defendant's attorney?

Mr. Bantz: Yes, from the defendant's attorney.

Q. In the year 1951 it says reported \$98,178.22 what does that mean?

A. That means gross receipts reported on the income tax return.

Q. And it says Indicated \$119,398.79, what does that mean?

A. It means that receipts should be reported in that figure.

Q. \$119,000.00? A. Yes. [359]

Q. And you have Increase (Decrease) in Net \$21,220.57. Is that an increase or decrease?

(Testimony of Paul Simonson.)

A. That is increase because there is no parentheses around it.

Q. In 1951 there is an increase of \$21,220.57?

A. In receipts.

Q. In receipts? A. Yes.

Q. Now, for the Year 1952, it shows reported \$97,952.27. Now, what is that according to the reported income?

A. That is indicated by the tax returns.

Q. By the tax returns? A. Yes.

Q. All right. The indicated for the Year 1952 is \$112,680.76, what is that?

A. That would be what should be shown on the tax returns according to this.

Q. According to their own calculations?

A. Yes.

Q. Then, there is an increase of \$14,728.49?

A. That is correct.

Q. Now, for the Year 1953 it shows reported \$102,901.72, indicated \$113,888.72, with an increase there in the amount of \$10,987.00?

A. That is correct. [360]

Q. Now, that means that it indicates from their records when they checked them it should have been increased by \$10,987.00?

A. That is right.

Q. Now, on the bottom of Plaintiff's Exhibit 67 it says, "Net Profit (logging)" which is in parentheses and it says for the year 1951, reported \$13,319.81, what does that mean?

(Testimony of Paul Simonson.)

A. That is the net profits from logging shown on the tax return.

Q. For the Year 1951? A. Yes.

Q. Then it says "Indicated." Am I right, is that still the same column? A. That is correct.

Q. Indicated \$44,834.55, what does that mean?

A. That is the figure which should be reported as indicated net profit for Mr. Palermo from logging in 1951.

Q. And it shows the difference of \$31,514.74?

A. Correct.

Q. For the Year 1952 it shows under "Reported" \$12,173.87. Now, that is on the return?

A. That should be the figure on the return, yes.

Q. Indicated \$40,812.43. Indicated means what it should have been? [361] A. Yes.

Q. According to these figures?

A. Yes, according to these figures.

Q. And then it shows an increase of \$28,638.56, is that correct? A. Yes, that is correct.

Q. Now, that is the increase over what was actually reported on the return?

A. That is correct.

Q. In the Year 1953 it shows Reported \$19,625.32, the indicated shows \$30,967.70 or an increase of \$11,342.38, is that correct?

A. That is correct.

Q. Handing you Plaintiff's Exhibit 25 for identification, have you seen that before?

A. I have.

Q. And what does that purport to be?

(Testimony of Paul Simonson.)

A. This is an application for loan at the Security State Bank at White Salmon.

Q. And it is for Joe Palermo?

A. Yes, for Joe Palermo.

Mr. Bantz: May I have the income tax return for 1948. I believe it is Exhibit No. 1.

Q. Handing you Plaintiff's Exhibit No. 1 for the Year of 1948, the income tax return, what does it show the gross [362] earnings of Mr. Palermo were for that year?

A. The adjusted gross income reported on this return is a loss of \$6,040.68.

The Court: For what year is that?

Mr. Bantz: It is for '48, your Honor.

The Court: Yes, '48.

Q. Does this show his annual income for the Year 1948?

A. Yes, it does. It shows "annual income or salary" and this is dated March 3, 1948.

Mr. Bantz: Your Honor, I am going to offer Plaintiff's Exhibit 25, which is a statement identified from the bank official at White Salmon. It is dated March 3, 1948, and I am offering it only for the purpose that it substantiates for original net worth figures and showing that his assets by his own statement run higher than what he states in here, and I want it for only that limited purpose.

The Court: Have you seen it, Mr. Moore?

Mr. Moore: Well, your Honor, we have one computation which we made subsequently and we have additional computations as far as the net

(Testimony of Paul Simonson.)

worth is concerned. I submit that Plaintiff's Identification No. 25 being an application for a loan at a bank is probably as a practical matter not based upon the same facts that the Government would contend that a proper net worth statement should be made, and in addition to that as counsel has already asked the witness with reference to [363] anticipated income, that is already shown that Mr. Palermo went into the logging business in the Fall of 1947, and in March 3rd of 1948, in trying to obtain a loan from the bank, he apparently makes an estimate of what he is going to make in 1948.

The Court: I think he is offering it as a basis as to net worth.

Mr. Bantz: Yes, net worth.

The Court: And until the contrary is shown, that a man is telling the truth about his assets.

Mr. Moore: The net worth, as I understand it, according to the law, is not based upon market value.

The Court: Well, I think there is some evidence. I will admit it for what it is worth. That is number 25?

The Clerk: Yes, sir.

(Whereupon, said statement was admitted in evidence as Plaintiff's Exhibit No. 25.)

Q. You have some computations there, don't you, Mr. Simonson, computations of tax?

A. Yes, I do.

Mr. Bantz: May I have those identified or

(Testimony of Paul Simonson.)

marked for identification. Would you mark those separately, please, Mr. Taylor. [364]

Mr. Clerk: 93, 94, 95, 96, your Honor.

The Court: Are there four of them?

The Clerk: Yes, sir.

Q. Mr. Simonson, handing you Plaintiff's Exhibit for Identification 93, was that statement prepared by you?

A. That was prepared by me.

Q. Now, Mr. Simonson, in our indictment we allege that the defendant well knew he owed back taxes and we computed certain figures that he owed taxes on in our indictment, and there has been exhibits admitted in evidence from which we computed our income tax for the Years of 1950, 1, 2 and 53? Is that correct?

A. That is correct.

Q. Now, have you had an opportunity to compute what the tax would be, the additional tax would be for Mr. Palermo to pay, from the exhibits that have been admitted in evidence, if his income tax return had been correct?

A. I have.

Q. Would you explain how you make a computation of tax for a year, any year, what is your procedure?

A. I start with the adjusted gross income and make additions to the adjusted gross income as indicated by the evidence. I allowed the deductions which are claimed in this particular case, the standard deductions used most years, and it was allowed, and the exemptions are allowed, and [365]

(Testimony of Paul Simonson.)

the tax then computed by applying the tax rates according to the law.

Q. Now, handing you Plaintiff's Exhibits 4, 5 and 6, please look at those and at Plaintiff's Identification 93, which pertains to the Year of 1950, what was your starting base that year?

A. I started with the adjusted gross income per return shown in Exhibit 3, \$4,553.00.

Q. And then to that you put the additional income?

A. I added the additional income per the summary to which I testified and which is in evidence of \$16,873.70.

Q. Now, in the computation of this tax for the Year 1950, did you use the generally accepted accounting procedure and practice for computing this tax?

A. I did.

Q. And you have done this in the past, I assume, Mr. Simonson?

A. I have.

Q. And what was the amount of tax that you came up with for that year?

A. The income tax liability for Joe and Bertha Palermo for '50, \$4,347.90. The income tax liability shown on the return was \$403.00. Additional tax of \$3,944.90.

Mr. Bantz: Your Honor, I will offer at this time Plaintiff's Exhibit 93 for Identification for the purpose of showing computation of tax in accordance with our indictment. [366]

Mr. Moore: Could I inquire?

The Court: Yes.

(Testimony of Paul Simonson.)

Mr. Moore: With reference to all four of these, to get it out of the way, when you say you add additional income per summary you are referring to your summaries which you gave before?

A. My summaries——

Mr. Moore: Your summaries which you gave before which showed income which had not been included in the records?

A. On the records, yes.

Mr. Moore: In other words, receipts which were income?

A. Yes.

Mr. Moore: I have no objection.

The Court: Admitted.

(Whereupon, said 1950 computation of tax was admitted in evidence as Plaintiff's Exhibit No. 93.)

Q. Now, Mr. Simonson, for the Year 1951, did you make a computation of the tax?

A. I did, sir.

Q. Did you use as a starting point the income tax return of 1951 for Mr. Palermo?

A. Yes, I did.

Q. What was that starting point? [367]

A. Adjusted gross income as shown on the return of \$13,378.81.

Q. And what tax was shown on his return that he owed?

A. He showed on his return that he owed tax of \$2,408.28.

(Testimony of Paul Simonson.)

Q. I am assuming that you again used the generally accepted practice of accounting procedure in determining the computation of tax for the Year 1951, is that correct? A. I did. I did.

Q. And was it from the evidence that has been adduced on this trial? A. Yes, it was.

Q. And again did you come up with the additional tax due and owing by Mr. Palermo for the Year 1951?

A. The income tax liability for the Palermo return of 1951 is \$10,862.46. That is an additional tax of \$8,454.18.

Mr. Bantz: I will offer Plaintiff's Exhibit 94 for identification in evidence.

Mr. Moore: No objection.

The Court: It will be admitted.

(Whereupon, said 1951 computation of tax was admitted in evidence as Plaintiff's Exhibit No. 94.)

Q. Now, referring to the Year of 1952, Mr. Simonson, did you make a computation of tax for that year? A. I did. [368]

Q. And did you start as a basis with the income tax return of Mr. Palermo for that year?

A. Yes.

Q. What is the figure you started with for that year?

A. I started with the adjusted gross income, Exhibit 5, of \$12,791.22.

Q. And how much was shown was paid by Mr.

(Testimony of Paul Simonson.)

Palermo for the Year 1952? A. \$2,450.90.

Q. Did you again use the generally accepted practice and procedure of accounting in the computation of tax for the Year 1952 in accordance with the evidence that has been admitted in this trial? A. Yes, I did.

Q. And what is the computation of additional tax due in accordance with the figures before you?

A. \$15,898.58, that is additional tax that should be paid of \$13,447.68.

Mr. Bantz: I will offer Plaintiff's Exhibit 95 into evidence.

Mr. Moore: No objection.

The Court: It will be admitted.

(Whereupon, said 1952 computation of tax was admitted in evidence as Plaintiff's Exhibit No. 95.) [369]

Q. Now, referring to the Year 1953, did you make a computation of tax for that year?

A. I did.

Q. Did you as a starting point use a figure that is shown on the income tax return of Mr. Palermo?

A. Yes.

Q. For that year? A. I did.

Q. What was that figure?

A. The adjusted gross income per return, Exhibit 6, is \$17,725.32. And may I explain, sir?

Q. Yes.

A. On the 1953 income tax here on Schedule "C"

(Testimony of Paul Simonson.)

there was a computation error of \$1,000.00 on the return, reflecting on his computation of the tax.

Q. You took it from him or gave it to him?

A. The computation showed \$1,000.00 more. Now, this return reflected \$1,000.00 more income than would otherwise be shown on the tax return.

Q. Then, what figure do you show that he paid tax on, the amount that he showed as income for the Year 1953?

A. He showed income tax liability on his return of \$4,026.60.

Q. All right. Now, did you in the generally accepted accounting procedure compute the tax in accordance with the evidence that has been admitted in this trial to show [370] what figure if properly computed he would have to pay for the Year 1953?

A. Yes, I did.

Q. And what is that total figure and then take away the amount that he has paid?

A. The income tax liability for Joe and Bertha Palermo for 1953 was \$9,458.96 and an additional tax of \$5,432.36.

Q. Now, Mr. Simonson, do you recall from the figures that were in the indictment and the figures that you have submitted in the computation of tax whether they are generally the same or exactly the same?

A. I think that they are exactly the same.

Mr. Bantz: I will offer at this time Plaintiff's Exhibit 96 which is the computation of tax for 1953.

(Testimony of Paul Simonson.)

Mr. Moore: No objection.

The Court: Admitted.

(Whereupon, said 1953 computation of tax was admitted in evidence as Plaintiff's Exhibit No. 96.)

Q. One more question, Mr. Simonson, the computation you took of income tax wasn't based upon Plaintiff's Exhibit 66, the net worth statement, that has been introduced, but on the specific items, is that correct? A. That is correct. [371]

Q. When I say "specific items" I mean the items that are in evidence in this trial?

A. That's right.

Mr. Bantz: Your Honor, I am quite sure we are going to rest and it is probably too late to start cross-examination, but I would like to have the opportunity over night to check my file to be sure I have got all of my exhibits admitted and I have everything in. To my knowledge, I have no other witnesses and I would like to talk for a few minutes with Mr. Simonson, and that would give counsel an opportunity over night to prepare for his cross-examination.

The Court: Yes, all right.

Mr. Bantz: It is only ten minutes to the time for adjournment.

The Court: I am going to excuse the jury until ten o'clock tomorrow morning, and perhaps you would like to know, ladies and gentlemen of the jury that I do not propose to hold court on Satur-

(Testimony of Paul Simonson.)

day, and so when you get through tomorrow afternoon you will be excused until Monday Morning, and you will have Saturday and Sunday to rest up. You will be excused until tomorrow morning at ten o'clock.

(Whereupon, the following proceedings occurred in the absence of the jury:)

The Court: I thought I would take this opportunity to say that counsel have the right to present requested instructions [372] to the Court, but I have quite a complete set of fairly recent income tax evasion cases similar to the charge here. I think that the last one I had was the Walters case, and I have tried to draft the instructions in accordance with the recent decisions of the Circuit Court of Appeals of the Ninth Circuit, and so I just wanted to tell you that, and so if you don't feel that you want to do a lot of work on the proposed instructions, it will not be necessary as far as I am concerned.

Mr. Bantz: Your Honor, I have some proposed instructions. What are you going to use on wilfulness, I would like to know? Are you going to use the same one you used in the Walters case?

The Court: I had that in mind. I think the Walters case was after the Block and later decision of the Supreme Court. * * *

(Whereupon, after discussion of the proposed instructions and law of the cases involved, court was adjourned.)